

# MOANING CAVERN ADVENTURE ACTIVITIES

## RELEASE AND WAIVER OF LIABILITY, PRIMARY ASSUMPTION OF RISK AND INDEMNITY AGREEMENT AND CONTRACT

Pursuant to United States Constitution, Article 1, Section 10

**WARNING:** By definition an ADVENTURE is an activity that includes inherent risk of loss, injury or even death; i.e., a merry-go-round involves virtually no risk and no adventure, while a ski-run down a steep slope may have a high degree of risk and, therefore, is an adventure activity. An adventure activity may have potential benefits that outweigh the risks and are good public policy regardless of any stated "public policy" or "policies," and are acceptable to the assignee or participating minors in the charge of an adult.

By signing this release form you will be acknowledging that you understand and accept the risks involved in return for the opportunity to experience personal psychological benefits which may result from this or these adventure activities.

This is a serious document. Do not sign it if you have any reservations. NO ADDITIONS, DELETIONS, CHANGES OR THE OMISSION of initials or signatures are permitted on this two-sided document. PLEASE INITIAL on the line after each numbered paragraph to indicate you have READ AND UNDERSTOOD that paragraph. The omission of an initial does not void agreement with that paragraph. YOU MUST THEN SIGN AT THE END OF THIS DOCUMENT TO INDICATE AGREEMENT in the presence of a Moaning Cavern employee who will sign the document as witness.

IN CONSIDERATION of being permitted to participate in the Risky Adventure Activities known as: (1) the Adventure Trip; (2) the Rappel; (3) the Zip Line; and (4) the Climbing Tower at Moaning Cavern, including all related structures and equipment and anything else related to these activities, the undersigned, for him/her self or for his/her participating minor child, and any personal representative, heirs, and next of kin, hereby:

1. Acknowledges that the Adventure Activities listed above are activities that have inherent dangers and that all statements or promises, verbal or printed, that I may have previously heard or received as to facts of safety are hereby repudiated. These hazards are a component of adventure and do involve the risk of serious injury and/or death and/or property damage.

Paragraph 1 read and understood \_\_\_\_\_

2. Acknowledges that risks may include, but are not limited to, misinformation and instructions or the lack thereof; equipment malfunction; equipment misuse by either the participant or other participants or employees of Sierra Nevada Recreation Corporation; falling, impacting objects or being impacted by objects; weather-related injuries; and others, with consequential injuries received that may be compounded by negligent rescue operations or procedures of the released parties or others.

Paragraph 2 read and understood \_\_\_\_\_

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3. Acknowledges that the Adventure Activities are activities for the purpose of recreation, sport, and entertainment only and not for transportation from one location to another, and expressly repudiates any common carrier claim (California Civil Code Section 2100-2104).

**Paragraph 3 read and understood\_\_\_\_\_**

4. Expressly and voluntarily exercises a Primary Assumption of Risk acceptance and assumes all risk of death, personal injury, property damage, and all other injuries that may be caused by passive or active negligence in actions or services of the released parties; or hidden, latent, or obvious defects or hazards in the equipment or in the activity environment itself, that may be incurred while participating in any listed activity (or that may be incurred by the participating minor child).

**Paragraph 4 read and understood\_\_\_\_\_**

5. Forever releases, waives, discharges and covenants to fully indemnify from all losses and agrees to not sue Sierra Nevada Recreation Corporation, doing business as Moaning Cavern, its officers, directors, employees, associates, suppliers, agents, heirs, and assigns, for claims, demands, or causes of action that I may have (or that the participating minor child may have) for injuries and damages arising out of participation on any Adventure Activity, including, but not limited to, losses caused by the passive, active or gross negligence of the released parties, or by hidden, latent, or obvious defects or hazards in the equipment or misuse of the equipment or the Adventure Activity environment itself.

**Paragraph 5 read and understood\_\_\_\_\_**

6. Agrees that this Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement extends to negligence of all kinds by the released parties, including negligent rescue operations, and is intended to be as inclusive as possible, and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

**Paragraph 6 read and understood\_\_\_\_\_**

7. Agrees to fully indemnify Sierra Nevada Recreation Corporation and be financially responsible for any attorney's fees, other legal fees, all treatment and/or any necessary emergency evacuation costs, and any other expenses of any kind arising from participation (or that of the minor child) on any Moaning Cavern Adventure Activity.

**Paragraph 7 read and understood\_\_\_\_\_**

8. Declares that I (or the participating minor child) have no history of illness or injury, nor are currently using any substance, medicine, drug or alcohol, that may hinder my ability (or that of my participating minor child) to participate on any Adventure Activity at Moaning Cavern.

**Paragraph 8 read and understood\_\_\_\_\_**

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**I HAVE READ this Release and Waiver of Liability, Primary Assumption of Risk and Indemnity Agreement, fully understand its terms, understand that I have given up substantial rights by signing it, and have signed it freely and voluntarily without any inducement, assurance, or guarantee being made to me by anyone, and have been given the opportunity to inquire as to any unclear elements in exchange for the opportunity for personal enhancement. I intend my signature to be an unconditional release from this time forward of all liability to the greatest extent possible, and acknowledge that any notes or modifications or addition or deletions or errors or false signatures or untrue claims of authority to sign for involved minors or omission of initials do not change or alter the original intent and force of this agreement, and further acknowledge and agree that the right of this contract is made subject to Article 1 Section 10 of the United State Constitution: “No state . . . shall pass any bill . . . or law impairing the obligation of contracts . . . ”**

\_\_\_\_\_  
Signature of Participant and/or  
Parent/Guardian of Participating Minor Child

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Witness

PLEASE **LEGIBLY PRINT** THE FOLLOWING INFORMATION:

Adult Name: \_\_\_\_\_ Phone Number (\_\_\_\_) \_\_\_\_\_

Name of participating minor child (if any): \_\_\_\_\_

Home Address: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email Address: \_\_\_\_\_

EMERGENCY CONTACT: Name \_\_\_\_\_ Phone Number (\_\_\_\_) \_\_\_\_\_

(8/20/13)

Date of Birth (optional) (mm/dd): \_\_\_\_\_