

Sunny Jim Sea Cave

Assumption of Risk, Waiver of Liability, and Indemnity Agreement

The Cave Store, Inc. (hereafter referred to as **Sea Cave**) is an historic Cave Store which allows access to the world famous Sunny Jim Sea Cave. In addition, the store houses Lulumars Jewelry Boutique which offers a large selection of jewelry, vintage clothing, and crafts for sale. From the store, a cave participant descends 145 steps through an interesting manmade tunnel down to the sea cave. The patron gets a unique view of the historic cave site, the Pacific Ocean, and the sea cave.

Sea Cave is open to both adults and children; however, Sea Cave management wants the adult participant or parent/legal guardian of a minor participant (hereafter referred to as **Participant/Parent**) to know that Sea Cave ranks participant safety as a top priority. Nevertheless, injuries can occur as there are certain **inherent risks** in Sea Cave as in all recreational activities. Inherent risks are those risks that cannot be eliminated without significantly changing the nature of the activity.

Some inherent risks involve tunnel- and platform-related risks, which include, but are not limited to: uneven, worn, wet, and slippery steps; low cave ceilings in places; slips, trips, and falls; occasional crowding; possible water from high tide and waves on the platform. In addition, this is a self-directed, unsupervised activity. Participant-related risks include, but are not limited to: failure to hold the stair handrails; running or hurrying on the stairs or platform; failing to obey posted safety instructions or verbal cautions; horseplay; claustrophobia, climbing over the handrail, into the water, or onto the rocks – (each of which can lead to drowning, being tossed onto rocks by waves, striking the walls, slip and falls, or being sucked through the cave opening into the sea). Co-Participant-related risks include, but are not limited to: failing to follow rules; erratic, careless actions; failing to give space to other participants; and horseplay. Small children-related risks include, but are not limited to: slipping and falling on wet areas; dangers due to parent/guardian not maintaining control; slipping under the platform railing; and parent/guardian slipping or falling while carrying the child. Facility-related risks include, but are not limited to: faulty steps; loose railing; falling rock; and a lighting failure. Management judgment-related risks include, but are not limited to: failure to adequately warn or instruct; failure to recognize a potential hazard during inspection; and failure to recognize that participant isn't fit for the climb.

Even though injuries rarely occur, the Participant/Parent should understand the types of injury that may occur during activities at Sea Cave. Minor injuries are the most likely and include but are not limited to: dizziness, headaches; bruises; scrapes; and minor sprains. Serious injuries are not common; they include, but are not limited to: broken bones (arm, ribs, etc.); concussions; and chipped teeth. Catastrophic injuries are highly unlikely and include, but are not limited to: permanent disability; heart attack; and even death.

Assumption of Inherent Risks: I, the Participant/Parent, understand the nature of the inherent risks of activities at Sea Cave and that some risk exists regardless of the care taken by Sea Cave. I have read the previous paragraphs and: 1) know the nature of Sea Cave's activities; 2) understand the demands of those activities relative to my physical and mental conditions; and 3) appreciate the types of injuries that may occur as a result of such activities. **I hereby assert that my participation in Sea Cave activities is voluntary and that I knowingly assume all inherent risks arising from those activities.**

Waiver of Liability for Ordinary Negligence of Sea Cave: In consideration for gaining access to premises used by Sea Cave and engaging in Sea Cave activities, today and on all future dates, I, the Participant/Parent, on behalf of myself, my spouse, children, parents, family members, legal wards, heirs, personal representatives, assigns, estate and insurers (hereafter referred to as Releasing Parties) **do hereby waive, release, discharge and covenant not to sue** The Cave Store, Inc., Lulumars Jewelry Boutique, their agents or representatives including owners, directors, managers, officers, employees, volunteers, independent contractors, affiliates, insurers, equipment suppliers, and owners of the premises (hereafter referred to as Protected Parties) **from liability from any and all claims including those arising from the ordinary negligence of the Protected Parties.**

This Agreement applies to 1) **personal injury** (including death), losses, damages, psychological distress and/or physical injuries or illnesses arising from Sea Cave activities. Such activities include but are not limited to: going down the tunnel, being on the platform, in the water or on the rocks, presence on Sea Cave property (including within the store, rest rooms, on the sidewalk, and in the parking lot) and to 2) any and all claims resulting from the damage to, loss of or theft of Participant/Parent's **property**.

Indemnification: I, the Participant/Parent, **agree to hold harmless, defend and indemnify** Sea Cave and all Protected Parties (i.e., defend and pay any judgment and costs, including investigation costs, attorney's fees, expert witness fees, and related expenses) **from any and all claims of Releasing Parties** (or others acting on behalf of Participant/Parent) arising from Sea Cave activities (including those arising from the **inherent risks** of the activity or the **ordinary negligence of Protected Parties**). I further agree to hold harmless, defend and indemnify Sea Cave and Protected Parties against any and all claims of co-participants, rescuers, and others arising from Participant/Parent's conduct while participating in Sea Cave activities.

Clarifying Clauses: I, the Participant/Parent:

1. **Integration Clause.** Understand that this is the entire Agreement between Sea Cave and me and that it cannot be modified or changed in any way by representations or statements by any Protected Party.
2. **Severability Clause.** Agree that this Agreement is intended to be as broad and inclusive as is permitted by the laws of the State of California and that if any portion thereof is held invalid, it is agreed that the balance shall continue in full legal force and effect.
3. **Venue, Jurisdiction, & Choice of Law.** Understand that if legal action is brought arising from Sea Cave activities, the appropriate venue for any legal action shall be in a court of competent jurisdiction located in San Diego County, California, and that the substantive laws of the State of California shall apply.

Acknowledgements to Promote Participant Safety: These assertions aid Sea Cave in providing for participant safety.
Health Status – I, the Participant/Parent:

- Possess sufficient physical and emotional fitness to enable safe participation in Sea Cave's activities;
- Assume the risks of all medical conditions (e.g., asthma, diabetes, anaphylaxis, epilepsy, heart disease or HBP); and
- Will immediately cease activity if there is discomfort (e.g., faintness, shortness of breath, high anxiety, or chest pains).

Emergency Care – I, the Participant/Parent:

- Authorize Sea Cave to secure emergency medical care or transportation if deemed necessary; and
- Will assume all costs of emergency medical care and transportation.

Rules & Safety – I, the Participant/Parent:

- Affirm having read and understood verbal and posted safety rules and agree to adhere to those rules;
- Agree to remain on the platform and not cross the railing.
- Understand that swimming in the cave is very dangerous and is not allowed.
- Will inform Sea Cave immediately if I see conduct or a facility condition that endangers participants;
- Will inform Sea Cave of any injury (even minor ones) prior to leaving the premises;
- Agree that Sea Cave has authority to terminate my participation if it is deemed a danger to the Participant/Parent or others.
- Agree to see that my minor child(ren) follow the rules and behave in a manner so as not to endanger themselves or others.
- Understand that shoes with rubber soles (tennis, cross trainers, etc.) are highly recommended.

Release of Image – I, the Participant/Parent, agree that Sea Cave can use my photo or video images for promotion (e.g., advertising, social media, website).

ADULT PARTICIPANT

Acknowledgement of Understanding: I, the adult participant, have read this agreement and understand that **I am giving up substantial rights**, including my right and the rights of the Releasing Parties to sue for damages in the event of death, injury or financial loss arising from Sea Cave Activities. I acknowledge that I am voluntarily signing this Agreement and intend my signature to be a complete waiver of all claims and a **release of all liability**, including that due to the **inherent risks** of Sea Cave's activities and the **ordinary negligence** of the Protected Parties, to the greatest extent allowed by laws of the State of California.

Parent/Guardian of MINOR PARTICIPANT

Acknowledgement of Understanding: I, the parent/legal guardian of the minor listed below, hereby grant my minor child permission to participate in all of Sea Cave's activities. Further, I have read this Agreement and agree that the minor child listed below and I are bound by it. I understand that **I am giving up substantial rights**, including my rights, the rights of my minor child, and the rights of the Releasing Parties to sue for damages in the event of death, injury or financial loss arising from Sea Cave activities. I acknowledge that I am voluntarily signing this Agreement and intend my signature to be a complete waiver of claims and a **release of all liability**, including that due to the **inherent risks** of Sea Cave's activities and the **ordinary negligence** of the Protected Parties, to the greatest extent allowed by laws of the State of California.

*Additionally, I, the Parent/Guardian of the minor child, assert that I have explained the **inherent risks** of Sea Cave's activities & the **safety rules** to my child. The signature of the minor is to affirm understanding and voluntary assumption of these inherent risks.*