

AFFIDAVIT OF COMPETENCY AND ASSUMPTION OF RISK; DEFINITION OF RELATIONSHIP OF PARTIES;
RELEASE FROM LIABILITY; AND INDEMNITY AGREEMENT

1. This instrument is both an agreement between the parties and a stipulation of facts which relate to the relationship and agreement of the parties. Should any provision be determined void or ineffectual to carry out the intent of the parties as expressed herein, such item shall be deemed severable, and the remainder of this instrument shall remain in full force and effect.

a. Parties are identified as masculine singular, regardless of number or gender, and whether individual, collective, or corporate. All lists are included as examples and not as limitations. "Herein," "herewith," "hereof," and "hereon" refer to this entire instrument.

b. This instrument shall have both retroactive and prospective effect, covering all times that User has been or will be upon Owner's premises. Prospective effect may be withdrawn by either party by writing delivered in person or by mail to the respective address endorsed hereon.

c. Parties. The following definitions are agreed.

(1) "Owner" - The holder of any interest whatever in the referenced premises, and any agent or servant of any such holder, whether or not specifically named herein. The parties intend that the protections afforded to Owner shall extend to every holder of any interest (and each of his agents and servants) in all lands entered by User. In the event of any mistake as to the ownership of lands entered, the authority of any purported agent, or the entry by User upon adjacent lands of third persons, all benefits and protections afforded to Owner shall extend to each person who holds any manner of interest in the lands actually entered by User (and to each of his agents and servants), provided only that he acquiesce in User's presence upon the premises and paragraph 3 below.

(2) "User" - the undersigned recreational user of Owner's premises.

d. Premises. This instrument applies to all lands entered by User. The parties may endorse hereon an approximate description of these lands, and will endorse hereon any of Owner's lands which User has no permission to enter.

e. The laws of Arkansas (e.g., Act No. 51 of 1965, Ark.Stats.Ann. § 50-1101, et seq., as amended) protect landowners from liability and encourage them to make their property available for recreational use. The purpose of this instrument is to provide additional protection to Owner over and above all statutory protections. This instrument has been prepared by cave explorers (Users), and not by any Owner, as a means of obtaining access to caves and related features. As a matter of convenience, copies of this instrument may be provided to Owners, and thus an Owner may present this instrument to a prospective User. User agrees that he is free to propose his own form of instrument, and by execution of this instrument he ratifies and accepts it as his own. This instrument shall be liberally construed to provide the greatest possible protection to Owners.

2. User is interested in the exploration of caves and other geological and geographical features, primarily for recreation, and in the search for such features not previously known. This instrument is executed by User in solicitation of Owner's permission for User to enter upon, for User's own purposes, the premises of Owner. Owner's grant of such permission constitutes good and valuable consideration for User's agreements, assurances, releases, and indemnities to Owner. User has no claim against Owner arising from any prior use of Owner's premises.

3. Owner agrees:

- a. Bare permission to enter his lands is granted to User, without any representation or warranty.
- b. No admission charge of any kind is required of User.
- c. He will not hold one User responsible for the acts, omissions, or claims of another User; Owner may, however, require a parent/guardian to assume full responsibility for his child/ward.

4. User agrees and warrants:

- a. He is physically and mentally sound, and thoroughly qualified and experienced in caving, climbing, diving, and all other activities which he will attempt upon Owner's premises.
- b. User is in a superior position to Owner in knowing and evaluating User's condition, ability, and judgment, and the condition, ability, and judgment of other Users concurrently upon the premises.

Property description and special provisions, if any: Ennis Cave, located on the property owned by Randal Wesley Rose. Property is located in the N 1/2 NW 1/4 NW 1/4 of Section 8, Township 14 North, Range 8 West, containing 19.5 acres, more or less, Stone County, Arkansas.

c. Caving, climbing, diving, and all other activities which User may attempt upon the premises are inherently dangerous. Among others, such dangers may include unsafe footing, loose and falling material, flooding, entrapment in constricted areas, unsafe air and gasses, disease from organisms or harmful substances, loss of direction, and failure or improper use of equipment. Such dangers are often aggravated by poor visibility, fatigue, hypothermia, and negligence of companions. Caves, bluff lines, sinkholes, and other areas are often modified by human activity and thus made more dangerous than same would be in their natural states. Often, unsafe conditions are not detected until it is too late. USER VOLUNTARILY EXPOSES HIMSELF to these and all other dangers, and VOLUNTARILY ASSUMES ALL RISKS of injury, death, and property damage in any environment.

d. He will use reasonable care to prevent fires, avoid litter, leave gates as he finds them, and avoid disturbance to livestock and damage to crops. He will not damage, deface, or remove any natural feature or any of Owner's property without Owner's specific permission.

e. Owner has no responsibility whatever for any effect of mining operations or any other modification of the premises which may have been made or may be made by anyone, whether known to Owner or not. User assumes the risk even of the presence of live explosives or other harmful substances on the premises.

f. User will at all times be upon the premises as a bare licensee.

(1) No act of Owner, as for example any act done for the safety, comfort or convenience of User, shall alter the relationship of the parties or create any basis for liability whatever.

(2) No act of User, as for example providing Owner with information, maps, photographs, or other materials, shall alter the relationship of the parties, be deemed a form of admission charge, or otherwise create any basis for liability whatever.

g. The undersigned User for himself, his heirs, assigns, and personal representatives, and all persons he supports or is supported by, releases Owner, his heirs, assigns, successors, and personal representatives, from any liability for any injury, death, loss, or damage, to any person or to any property, while he or such property shall be upon Owner's premises, whether such casualty shall be caused by negligence of Owner, negligence of third persons, the condition of the premises, or otherwise.

h. User binds himself, his heirs, assigns, and personal representatives, to pay to Owner, his heirs, assigns, successors, or personal representatives, two times the aggregate of all sums of money (including as examples, settlements, fees of attorneys and expert witnesses, and any court costs) that Owner might reasonably expend in the settlement or defense of any claim arising from User's presence upon Owner's premises. User agrees that these double damages do not exceed fair and just compensation for distress, loss of work time, and other intangible injuries to Owner that would be caused by the assertion of a claim against Owner. If this payment is not made prior to suit for same by Owner, damages paid will also include Owner's attorney's fees and other expenses incidental to collection.

i. User also assumes all risk of any manner of loss, injury, damage, or death suffered by any other User, and waives any manner of claim he might assert on behalf of or with respect to any other User, including as examples any claim for loss of support or services, consortium, out of pocket expenses of any nature, wrongful death, or any other claim of whatever nature. It shall make no difference whether such other User shall sign this or any similar instrument. User ratifies all representations and agreements made by all other Users, consistent with paragraph 3c above.

5. It is stipulated that in the event of any action between the parties, this instrument may be entered into evidence by either party, and the entire contents hereof made available to the trier of fact.

I HAVE CAREFULLY READ THIS INSTRUMENT AND UNDERSTAND ALL OF ITS PROVISIONS, AND I HAVE RECEIVED OR REFUSED A COPY OF IT, COMPLETE WITH ALL ENDORSEMENTS.

I now hereunto set my hand as my own free act this _____ day of _____, 19____.
[Signature, printed name and address, status as Owner/User/Witness. Parents, etc., sign as Users.]