

## Berkshire East Ski Resort, LLC.

### MOUNTAIN ACTIVITY PARTICIPANT AGREEMENT, RELEASE OF ALL CLAIMS, AND ACKNOWLEDGMENT OF RISK **Read This Entire Document**

**DEFINITIONS:** In this release agreement, the term "Mountain Activity" shall include all activities, events, services or use of facilities provided, arranged organized or conducted by the below-named releasees including but not limited to: cycling, downhill mountain biking, guided biking activities, bike camps, use of the Thunder Mountain Bike Park, bike skills training, use of trails and roads for any activity, competitions, demonstrations and events, orientation and instructional courses and sessions, and all other related activities, events or services.

In consideration for releasees Berkshire East Ski Resort, LLC, "Berkshire East" the Schaefer Family, their agents, owners, officers, volunteers, participants, employees, and all other persons or entities acting in any capacity on their behalf (hereinafter collectively referred to as "**Berkshire East**") providing me use of facilities, services and/or equipment to enable me to participate in Mountain Activities, I hereby agree to fully and completely release and discharge from all liability, losses, claims, damages, and expenses, Berkshire East on behalf of myself, my children, my parents, my heirs, assigns, personal representatives, and estate as follows:

1. I acknowledge that I am participating in a Mountain Activity, an activity which involves risks, known or unknown, inherent or otherwise, and some of which are described herein. I further understand that the activity involves strenuous physical activity that may be hazardous to some people due to their physical condition and that outdoor activities of this nature involve dangers and risks that can lead to serious injury and/or death.

Injuries are a common and expected part of these Mountain Activities. Mountain Biking, Downhill Mountain Biking, running, biking, and all Mountain Activities involve participation on partially improved and unimproved trails and roads, as well as on naturally rugged terrain. These are HAZARDOUS activities that involve risks, including but not limited to encounters with others engaging in Mountain Activities, encounters with domestic and wild animals, use of chairlifts, mechanical failure of equipment, falls, steep slopes and inclines, rapid or uncontrolled acceleration on hills and inclines, uneven terrain, rocks of various sizes, adjacent trees, roots, tree stumps, cliffs, rivers and creeks, treadway drops, holes, depressions, dirt features, other constructed features such as bridges, bumps, berms, jumps, drops, elevated earthen ramps, uneven and/or slippery trail conditions, varying slopes, variation in terrain, forest growth, loose gravel and dirt, wet surfaces, downed timber, debris, waterbars, and collisions with natural and constructed objects, other riders, pedestrians, spectators and officials, heavy equipment, and vehicles. Trail conditions may change quickly due to weather, use and other factors. I recognize these risks, and release and discharge Berkshire East from all claims.

The guides, instructors, coaches and staff employed by Berkshire East have difficult jobs to perform and are not infallible. They must make quick decisions in high stress and complex situations. The judgment of guides, instructors, coaches, guests, the public, or myself may be impaired by the nature of the situations encountered. I understand that guides, instructors, coaches and staff may misjudge a participant's fitness, weather, elements, mountain conditions, the terrain and/or other unknown items. I again acknowledge I am voluntarily embarking upon this experience, recognize these risks, and release and discharge Berkshire East to include, but not limited to, the negligence of Berkshire East.

2. I expressly agree and promise to accept and assume all of the risks existing in this activity. My participation in this activity is purely voluntary, and I elect to participate with full knowledge and understanding of these risks.

3. I hereby acknowledge and agree to obey the Mountain Biker's Responsibility Code which is printed below, and on the back of my ticket at all times while at Berkshire East.

4. **HELMETS ARE REQUIRED AT ALL TIMES:** I hereby agree to wear a helmet and that the helmet I am wearing is in good working order and not otherwise damaged.

5. I hereby agree that I have checked my equipment and it is in proper functioning order. I acknowledge that full-face helmets, full body protective gear (i.e. chest, spine, elbow & knee pads), and a full suspension bike are highly recommended.

6. I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless Berkshire East and others engaging in Mountain Activities from any and all liability, claims, demands, or causes of action including but not limited to claims for bodily injury, which are in any way connected with my participation in this activity or my use of Berkshire East equipment or facilities, including any such claims which allege negligent acts or omissions of Berkshire East.

7. I hereby grant permission to Berkshire East to make and use for promotion or other purposes, photographic records without recourse or compensation to me.

8. Should Berkshire East or anyone acting on their behalf be required to incur attorney's fees and costs to enforce this Agreement, I agree to indemnify and hold them harmless for all such fees and costs.

9. I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while participating or I agree to bear the costs of such injury or damage myself. I further certify that I have no medical or physical conditions which could interfere with my and others' safety in this activity.

10. I agree that the Commonwealth of Massachusetts has exclusive jurisdiction over all claims I make or is made on my behalf against Berkshire East and that every claim/suit against Berkshire East shall be commenced in Massachusetts regardless of any conflict of laws rules of any other jurisdiction.

11. Should any word(s), term(s), part(s), or provision(s) of this document be determined to be unenforceable, I acknowledge and agree that the remainder of the document shall remain in full force and effect.

**By signing this document, I acknowledge that if I or anyone else is hurt or property is damaged during my participation in this activity, I have waived my right to maintain a lawsuit against Berkshire East Ski Resort, LLC.**

**I have had sufficient opportunity to read this entire document. I have read and understood it, and I agree to be bound by its terms.**

**I am releasing Berkshire East from all claims.**

Full Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email Address: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Signature of Participant: \_\_\_\_\_ Date: \_\_\_\_\_

**Parent's or Guardian's Additional Indemnification (Must be completed for participants under age 18)**

In consideration of \_\_\_\_\_ (print minors name) ("Minor") being permitted by Berkshire East to participate in its activities to use its equipment and facilities. I further agree to indemnify and hold harmless Berkshire East from any and all claims which are brought by or on behalf of Minor and which are in any way connected with such use of participation by minor.

Signature of Parent/Guardian: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

**MOUNTAIN BIKER'S RESPONSIBILITY CODE**

- 1. Stay In Control At All Times** – It is your responsibility to avoid other persons and objects around you.
- 2. Yield to Others** - Try to anticipate other trail users as you ride around corners. Bicyclists should yield to all other trail users, unless the trail is clearly signed for bike-only travel. Bicyclists traveling downhill should yield to ones headed uphill, unless the trail is clearly signed for one-way or downhill-only traffic. When entering a trail or starting downhill, you must look uphill and yield to other riders. Do not stop where you obstruct a trail or are not visible from above.
- 3. Ride On Open Trails Only** - Respect trail and road closures. Obey all signs and warnings and do not ride where mountain biking is not explicitly invited. This also means staying on existing trails and not creating new ones. Don't cut switchbacks. Wooded areas between open trails are not patrolled and have no biker services. If you bike in these areas, you are solely responsible for yourself.
- 4. Control Your Bicycle** - Inattention even for a moment could put yourself and others at risk. Obey all bicycle speed regulations and recommendations, and ride within your limits.
- 5. Safety Equipment** - Always wear a helmet and other appropriate safety gear.
- 6. Leave No Trace** - Be sensitive to the dirt beneath you. Wet and muddy trails are more vulnerable to damage than dry ones. When the trail is soft, consider other riding options. Be sure to pack out at least as much as you pack in.
- 7. Never Scare Animals** - Animals are easily startled by a sudden movement or a loud noise. Give animals enough room and time to adjust to you. When passing horses, use special care and follow directions from the horseback riders (ask if uncertain). Do not feed, provoke or approach wildlife.
- 8. Plan Ahead** - Know your equipment, your ability, the area in which you are riding, and prepare accordingly. Keep your equipment in good repair and carry necessary supplies for changes in weather and/or mechanical issues. Ideally, riders will enjoy the trails in groups of three or more not to exceed 10 riders. It is also recommended you share where you're riding and an estimated return time to someone at home.
- 9. Rescue Response** - Please assist if you are involved in or witness a collision or accident and identify yourself to the bike patrol. Be aware that there are no patrol services outside of operating hours and resort buildings are closed. In case of emergency, call 911 and understand that response times could be extended. Be aware that mobile phone service can be unreliable on the mountain.