

BERKSHIRE EAST SKI RESORT, LLC
BIKE PARK WAIVER AND RELEASE
YOU ARE VOLUNTARILY ENGAGING IN MOUNTAIN BIKE ACTIVITIES
AND WAIVING ALL LEGAL CLAIMS

WARNING! Recreational activities offered by Berkshire East Ski Resort, LLC, doing business as Thunder Mountain Bike Park, (including downhill mountain biking, guided biking activities, bike camps, cycling, and competitions) involves many inherent risks which may result in physical or emotional injury, paralysis, death, or damage to myself, to my property, or to third parties.

DEFINITION: In this release agreement, the term "Mountain Bike Activities" shall include all activities, events, services or use of facilities provided, arranged organized or conducted by Berkshire East Ski Resort, LLC, doing business as Thunder Mountain Bike Park, including but not limited to: downhill mountain biking, guided biking activities, bike camps, cycling, use of the Thunder Mountain Bike Park, bike skills training, use of chairlifts, trails and roads for any activity, competitions, demonstrations and events, orientation and instructional courses and sessions, and all other related activities, events or services.

ACKNOWLEDGMENT OF RISKS & HAZARDS: I acknowledge that Mountain Bike Activities offered Berkshire East Ski Resort, LLC, doing business as Thunder Mountain Bike Park, is ultra hazardous, requiring the deliberate control and good judgment of the participant. These activities contain inherent risks including but not limited to the risks of personal injury, death, damages and/or property damage. Hazards may include but are not limited to the improper use or malfunction of ski lifts, manmade obstacles or features, travel vans, and other components, and related equipment used by participants. There are natural and environmental dangers including severe weather conditions, insect bites, bee stings, and encounters with poisonous plants and with area wildlife. There is hiking involved on uneven ground surfaces which contain rocks, tall and slippery grass, bumps and ruts, and steep terrain which include risks of slipping or falling. There are risks of impacting objects or being impacted by objects while participating in this activity, including the possibility of colliding with other participants or machinery. Severe injuries or death may result from falls, steep slopes and inclines, rapid or uncontrolled acceleration or deceleration 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, water bars, 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 understand the actions of me or others, including staff and participants may cause severe or even fatal injuries to me or others. I agree to voluntarily participate in the applicable Mountain Bike Activities despite the risks involved, which may be caused by the variations in terrain, slope design, or weather conditions. I understand that such risks simply cannot be eliminated without jeopardizing the essential qualities of the activity. Furthermore, guides, instructors, operators, and facilitators have difficult jobs to perform. They seek safety, but they are not infallible. They might be unaware of a participant's fitness or abilities. They might misjudge the weather, the elements, or the terrain. They may give inadequate warnings or instructions, and the equipment being used might malfunction. I acknowledge I am voluntarily undertaking these activities and recognize these risks and have executed this release and discharge after due consideration of such known and unknown risks.

RELEASE OF LIABILITY: In consideration of the services and equipment provided, I FOREVER RELEASE AND FULLY DISCHARGE, BERKSHIRE EAST SKI RESORT, LLC, a Massachusetts limited liability company, doing business as Thunder Mountain Bike Park, and all of its subsidiaries and affiliates, and any and all of its agents, servants, successors, heirs, personal representatives, administrators and all other persons, employees, corporations, subsidiaries, affiliates, firms, predecessors and successors in interest (collectively, the "RELEASED PARTIES") from all liability for personal injury and/or death and/or damages and property loss to myself, my child if applicable, and anyone for whom I sign this Release (together, the "Participant") as a result of the acts or omissions of the RELEASED PARTIES including, but not limited to negligence, breach of warranty, product defect, loss, damage or theft of personal property, the conduct of any other person and any other cause.

COVENANT NOT TO SUE: In consideration of the services and equipment provided, I agree that I will not make any claim nor bring any suit for any damages, injury or death to the participant which results from any inherent risks or other risks, as I have agreed they are defined herein. This contract may also be pled as an affirmative defense to any claim that I, or anyone on my behalf or because of my injury or death, might make as a result of any damage, injury, and/or death which I, or my child may sustain as a result of his or her participation in and caused by the inherent or other risks of the recreational activities offered by the RELEASED PARTIES. This release and covenant not to sue shall be read as broadly as allowed at law.

INDEMNITY AND HOLD HARMLESS: I also agree, that if anyone makes any claims against the RELEASED PARTIES or any of its affiliates, officers; directors, shareholders, agents, and/or employees, as a result of the participant's activities on their premises or the use of their facilities, that I will indemnify and hold harmless the RELEASED PARTIES from such claims. I, for myself and my heirs and assigns hereby acknowledge and accept these risks for myself or my child. If I have executed this Release for another person, I represent that I have complete authority and will indemnify and hold the RELEASED PARTIES harmless from any claims (including attorney's fees incurred) that the Release was not properly executed by or on behalf of the Participant.

RELEASE OF EMPLOYEES: The guides and staff employed by the RELEASED PARTIES have difficult jobs to perform and are not infallible. They must make quick decisions in high stress and complex situations. The judgment of guides, guests, the public, or myself may be impaired by the nature of the situations encountered. I understand that guides may misjudge a participant's fitness, weather, the terrain and/or other unknown items. I again acknowledge I am voluntarily embarking upon this experience, recognize these risks, and release and discharge the RELEASED PARTIES as well as the guides and other employees of the RELEASED PARTIES for any negligence and, specifically the acts and omissions of their guides and other guests and claims that guides and staff were not adequately trained or possessed sufficient experience and/or skill.

REQUIRED EQUIPMENT AND MOUNTAIN BIKER'S RESPONSIBILITY CODE: I hereby agree to wear a helmet and that the helmet I am wearing is in good working order and not otherwise damaged. 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), disc brakes, and a full suspension bike are highly recommended. I hereby acknowledge and agree to obey the Mountain Biker's Responsibility Code which is printed below.

MEDICAL DISCLOSURE AND CONSENT TO NECESSARY MEDICAL TREATMENT: I certify I am (or that my child is) physically fit and has no medical conditions that affect the ability to participate in the applicable activities. I understand that participants may not use or be under the influence of alcohol or drugs while engaged in these recreational activities. I understand and agree that the RELEASED PARTIES do not have medical personnel or treatment available. I hereby authorize and grant full permission to the RELEASED PARTIES secure emergency medical treatment for me or my child, if necessary, and further that such action shall be subject to the terms of this Agreement. I understand and agree that the RELEASED PARTIES make no warranty and assume no responsibility for any injury or damage that might arise out of or in connection with such authorized emergency medical treatment.

AUTHORIZATION FOR USE OF IMAGE & COMMENT: Furthermore, I do hereby release, the RELEASED PARTIES, from all claims relating to images and videos of my person, family, and dependents and agree to grant reproduction and/or publication rights without compensation for any and all purposes for the use of said images and videos. These rights shall include all uses in traditional print media, electronic rights for existing media and any future forms of electronic media. These rights shall be granted in perpetuity and without restrictions.

INSURANCE: 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 (and others, if caused by my conduct). I further certify that I have no medical or physical conditions (or my child has no such conditions) which could interfere with my and others' safety in this activity.

PARTICIPANTS UNDER AGE 18: As parent or legal guardian signing this agreement for the named minor(s), I acknowledge and agree that I have read the document and I am signing this document on behalf of the minor. Minors may be asked to sign to acknowledge risk. I understand and agree that the RELEASED PARTIES are not responsible for supervision of minors. At all times, supervision of minors is the responsibility of the group leaders, parents, or guardians.

ELECTRONIC SIGNATURE: I recognize that I may accept the terms of this Release electronically and that an electronic or photocopy release will be enforceable as if the document were a signed original. If I have signed electronically, I acknowledge that I was given a full, fair, and complete opportunity to read this release prior to accepting its terms, either by viewing a hard copy, viewing it on a computer, tablet or smartphone screen or printing it on my own.

JURISDICTION AND CHOICE OF LAW AND ATTORNEY'S FEES: I agree that any claim that I may bring against the RELEASED PARTIES shall be brought in the Superior Court, Franklin County, Massachusetts or the U.S. District Court for the District of Massachusetts and no other jurisdiction and shall be governed by Massachusetts law. I consent and agree for myself and/or my minor child to be bound by this agreement and I hereby indemnify the RELEASED PARTIES for all awards, legal expenses and settlements arising out of this Agreement. If the RELEASED PARTIES 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. I also understand that if any part of this agreement is determined to be unenforceable, all other parts shall be given full force and effect.

OTHER TERMS: This is a legally binding contract that supersedes all other agreements or representations by Berkshire East Ski Resort, LLC, doing business as Thunder Mountain Bike Park, and is enforceable until revoked in writing. If any terms are deemed unenforceable, all other provisions shall be given full force and effect. I ACKNOWLEDGE THAT THIS RELEASE WILL APPLY FOR EACH AND EVERY TIME I OR MY CHILD USES THE RELEASED PARTIES FACILITIES. I understand that this is a release of liability which will legally prevent me or any other person from filing suit or making any other claims for damages in the event of personal injury, death, or property damage. I have accurately reported my child's name, age, weight and/or medical condition. I intend this document to be interpreted as broadly as permissible by Massachusetts law and understand that it is not intended to assert any claims or defense prohibited by law.

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 FURTHER ASSERT I HAVE COMPLETE AUTHORITY TO EXECUTE THIS DOCUMENT FOR MYSELF AND ANYONE FOR WHOM I AM EXECUTING THIS DOCUMENT.

This Agreement is executed under seal on the date noted below.

Participant Signature	Parent / Guardian Signature	Participant Age:
	Or Emergency Contact (no signature required)	
Print Name	Print Name	
Address:	Address:	Email Address(es):
Date:	Tel No.	

If a participant is under 18, the signature of parent/legal guardian is required to sign before the child will be permitted to participate.

MOUNTAIN BIKER'S RESPONSIBILITY CODE

(HELMETS ARE REQUIRED AT ALL TIMES)

- 1. Stay In Control At All Times** – It is your responsibility to avoid other people 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.