

# **BERKSHIRE EAST SKI AREA WINTER SPORTS PROGRAM WAIVER AND RELEASE**

## **READ THIS CAREFULLY: YOU ARE VOLUNTARILY ENGAGING IN WINTER SPORTS ACTIVITIES AND WAIVING ALL LEGAL CLAIMS**

**WARNING! Skiing in its various forms (including downhill skiing, ski racing, telemark skiing, alpine touring snowboarding), and snow tubing and snowshoeing involves many risks inherent winter sports including but not limited to the unevenness and unpredictability of the surface, steep, slippery, uneven conditions, and interaction with machines, equipment and other skiers.**

**ACKNOWLEDGMENT OF RISKS & HAZARDS:** I understand that participating in the winter sports programs at Berkshire East (including Berkshire East Race Program, Snow, Sports Lessons, Ski Racing and Snow Tubing as applicable to me or my child) (the "Program Activities") is hazardous and includes the risk of injury and require the deliberate control and good judgment of the participant. The Program Activities contain inherent risks including but not limited to the risks of personal injury, death, damages and/or property damage. The Program Activities contain inherent risks including but not limited to the risks of personal injury, death, damages and/or property damage which may be caused by variations in terrain, slope design, or weather conditions, surface or sub-surface snow, ice, bare spots or areas of thin cover, moguls, ruts, bumps, roads, catwalks, other persons using the facilities, rocks, forest growth, debris, branches, trees, roots, stumps or other natural objects or man-made objects such as snowmobiles, snow machines, snow grooming equipment, signs, fence posts and off-trail snowmaking equipment as well as many other hazards, that are incidental to the provision and/or maintenance of Berkshire East. Participants may encounter steep terrain and become air-borne. I acknowledge that falls, injuries and collisions with other skiers/riders (including uphill traffic) are a common occurrence in the Activities. I understand there are risks of impacting objects or being impacted by objects or other persons while participating in the Program Activities and that children are regularly and frequently injured in the Program Activities. I specifically acknowledge that racing and race training is extremely dangerous and acknowledge that racing, race training, skiing/riding at high speeds, gate training, drills and all other race training is especially hazardous. Snow tubing presents the additional risk because of the lack of control of the snow tube so snow tubers are responsible for determining that the snow shoot is clear before descending. Snow tubes may be used in designates snow shoots only. If enrolled in a race program or other program that that requires it, I represent that my child has the ability to ride all uphill transportation devices (ski lifts) by themselves, with other children only, and with general public. I acknowledge these risks are both obvious and necessary to winter sports and freely and voluntarily elect to enroll, or to enroll my child in one or more of the Program Activities understanding such inherent risks include serious or fatal injury.

**RELEASE OF LIABILITY:** In consideration of being able to participate in the Program Activities, I FOREVER RELEASE AND FULLY DISCHARGE, BERKSHIRE EAST SKI RESORT, LLC, a Massachusetts limited liability and all of their subsidiaries and affiliates, and any and all of their agents, servants, successors, heirs, personal representatives, administrators and all other persons, employees, corporations, subsidiaries, affiliates, firms, predecessors and successors in interest (collectively, the "SKI AREA 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 SKI AREA 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 me or my child being able to participate in the Program Activities, 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 winter sports. This release and covenant not to sue shall be read as broadly as allowed at law.

**INDEMNITY AND HOLD HARMLESS:** I also agree, that in the event that anyone makes any claims against the SKI AREA RELEASED PARTIES, as a result of the participant's activities on its premises or the use of their facilities, that I will indemnify and hold harmless the SKI AREA 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 SKI AREA 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.

**MEDICAL DISCLOSURE AND CONSENT TO NECESSARY MEDICAL TREATMENT:** I certify that my child is physically fit and has no medical conditions that affect their ability to participate in the applicable Program Activity. I will disclose any medical or behavioral issues which my child has and understand that some medical or behavioral issues will disqualify participation. I understand that participants in the Program Activities may not be pregnant or under the influence of drugs or alcohol. I certify that my child meets the age requirements and height and weight restrictions to participate in the Program Activities. Should a medical emergency arise, I realize my child may be far away from emergency rescue and treatment facilities. I give permission to Berkshire East to render first aid and/or call upon Emergency Services for my child's well-being.

**AUTHORIZATION FOR USE OF IMAGE & COMMENT:** I understand that my child may be photographed, video-taped or recorded while at Berkshire East. I hereby release Berkshire East from all claims relating to images and videos of my child, person, and family and agree to grant reproduction and/or publication rights without compensation for all purposes including all uses in traditional print media, electronic rights for existing media and any future forms of the electronic media to Berkshire East for the use of said images and videos. These rights shall be granted without restriction.

**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 am signing this document on behalf of the minor. Minors may be asked to sign to acknowledge risk but are not authorized to sign the children's program activities Waiver and Release form without their parent or legal guardian signing on their behalf.

**ELECTRONIC SIGNATURE:** I recognize that I may accept the terms of this Release electronically and that an electronic or photo copy 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:** I agree that any claim that I may bring against the SKI AREA 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 SKI AREA RELEASED PARTIES for all awards, legal expenses and settlements arising out of the use of the SKI AREA RELEASED PARTIES.

**OTHER TERMS:** This is a legally binding contract that supersedes all other agreements or representations by the SKI AREA RELEASED PARTIES. 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 PARTICIPATES IN THE PROGRAM ACTIVITIES AT BERKSHIRE EAST. 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 made no misrepresentations regarding my child's name, age, weight 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:
Print Name	Print Name	
Address:	Address:	Email Address(es):
Date:		

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