

Swain Resort

Swain Recreation Center, LLC

Denton Hill Family & Ski Resort, INC

Swain Mountainside Inn and Condos, LLC

WARNING AND EXPRESS ASSUMPTION OF RISK AGREEMENT
PLEASE READ CAREFULLY. THIS MAY AFFECT YOUR LEGAL RIGHTS

In consideration of the services of Swain Resort, the participant and/or parent of legal guardian of a minor(s) in participation acknowledges & agrees as follows:

General Regulations

Lift Ticket & Season Pass:

- Lift Tickets are non-refundable and non-transferable once purchased. Future promotions are independent of this offering. No refunds for any reason, including but not limited to sickness, injuries, health problems, weather conditions or natural disasters.
- Lift Tickets and/or Season Passes are for the ticket/pass holders exclusive use only. Use by another person can result in revocation of your ticket/pass without refund and potential theft of services charges for unauthorized user.
- Lift Tickets and/or Season Passes must be present on the ticket holder to gain access to the ski lift.
- If your Season Pass is lost or stolen, you must notify Guest Services at once. A re-print fee of \$25 will be charged to process a new pass.
- Ski area regulations are enforced in accordance with the New York State General Obligations Law, Article 18 and 12 NYCRR Part 54, "Safety in Skiing Code." Any misuse, fraudulent use, misconduct, or nuisance caused by the ticket/pass holder or failure to follow New York State law may result in revocation without refund or other considerations. Swain Resort's management reserves the right to revoke Tickets and/or Season Passes depending on the

severity of the infractions.

Conditions of Purchase

Lift Ticket & Season Pass:

- Swain Resort reserves the right to change operating dates & times. This includes but is not limited to opening/closing dates, number of days open in a week, restrict access to any open lift and/or terrain at any time based on weather, snow, crowds, capacity restrictions, special events or any other condition or reason. Swain Resort also reserves the right to determine the number of lifts in operation or area available for use at any given time based on snow, weather or other condition or reasons. A minimum number of operating days is not guaranteed.
- The age of the child by December 1st of the upcoming season will determine eligibility for all tickets and/or passes. A “free” ticket and/or season pass will be issued to those 6 years of age and under, with a paying adult, minus the \$15 fee to print the pass.
- You may choose to keep your existing season pass photo, upload a new photo online, email a new photo to Guest Services at info@swain.com, or update your photo in person. Swain Resort, at its discretion, can request that a new photo be taken at any time. Photos are required to be at shoulder length and above, with a clear image of your face without sunglasses. In addition, the image should match what you currently look like.
- A media card will be issued for each season pass purchased. This card serves as your permanent lift ticket for the season. Your card must be secured to your person and in a location that can be read by the ticket checkers for every lift boarding occasion.
- Swain Resort assumes no responsibility for personal items lost, stolen, or damaged while on property. This includes, but is not limited to, lost or stolen skis, boards & equipment, damage to equipment while using terrain park features, damage to outerwear from lift grease, etc.
- All pass purchasers must sign the Swain Resort Terms & Conditions digitally through a waiver system before receipt and/or use of the season pass. If purchasing online, a signature is required on the Swain Resort Terms & Conditions/Waiver, which is presented immediately following completion of the

payment. If the purchaser does not have access to the internet, Swain Resort will provide access to a digital device where the purchaser can sign the Swain Resort Terms & Conditions/Waiver in person. Persons under 18 must have a parent or legal guardian sign the Swain Resort Terms & Conditions/Waiver.

All dates, rates and provisions are subject to change without notice

Payment Plans

Payments will automatically be taken from the credit/debit card you make the first payment with. A missed payment will incur a \$25 fee, and If you miss two consecutive payments on your payment plan, you will no longer be eligible for the original sale price and will be transferred to the current price of that season pass. If you choose to request a refund before the start of the season your payments up until that point will be refunded, less a \$35 processing fee.

Family Pass, Duo Pass, and proof of discounted passes

- *Family Rates* are for immediate family, including spouse and children/dependents under the age of 22 at time of purchase, who are living at home or attending college full-time. Dependent persons are those claimed on your Federal Tax Return for the prior year.
- College students must present or send a copy of their college ID before a Student Pass will be issued
- Military pass - must show proof of service. Acceptable forms of proof are a DD Form 214, an active veteran health identification card, an official benefit summary letter from the VA, an NGB Form 22, a military ID card, an honorable discharge certificate, or a state-issued driver's license that has veteran designation or status on it.

Season Pass Benefits and Reciprocals

- Season pass benefits, discounts and reciprocals are only applicable to full season passes (Single, Duo, Family, Military, Student or Senior). The additional pass benefits and reciprocals are **NOT** available to free or partial passes e.g. Under 6, 75+, Twilight, College Twilight, Uphill and Employee passes.

Refunds & Rollovers: Season Passes, Rentals, Lease Equipment, and Lockers

Before the start of the season, a person may receive a refund for the following reasons only:

- Relocation of living. A letter indicating transfer, from a past or present employer, is required for verification.
- Medical Concern. A letter from a medical professional who is treating the passholder is required for verification.

If you purchased your pass before April 1st, your refund will be deducted \$125, because you were able to ski the remainder of the previous season.

After the season starts, a person may request to receive a refund if unable to ski due to a medical reason only. A letter from the doctor treating the passholder is required for verification. If approved, refunds will be pro-rated as follows:

- Up to 10 days of operation into the season: 70%
- Up to 20 days of operations into the season: 40%
- Up to 30 days of operation into the season: 20%
- After 31 days of operation into the season, refund requests will no longer be accepted.

*A bookkeeping fee of \$35 will be deducted from the refund amount.

Rollovers/Pass Forwarding

A rollover may be received if the purchaser is unable to ski due to a medical concern only. A rollover refers to the action of deferring the value of the current purchase to the next consecutive season only. A letter from a medical professional treating the pass holder is required for verification. Passes forwarded due to an injury before the start of the season will result in 100% of the pass value being forwarded to the next season. Passes forwarded due to an injury after opening day but prior to January 31st will result in 50% of the pass value being forwarded. Requests will not be accepted after January 31st for any reason.

*A bookkeeping fee of \$20 will be deducted from the rollover amount.

Freestyle Terrain:

Freestyle terrain may include jumps as well as terrain parks & features. Freestyle terrain use, like all skiing and riding, exposes you to the risk of serious injury or death. Prior to using freestyle terrain, it is your responsibility to familiarize yourself with all instructions and warnings and to follow [“your responsibility code.”](#)

1. Contains man-made & natural terrain variations.
2. Constant change due to weather & use
3. Inspect freestyle terrain before using and throughout the day.

4. Utilizing the terrain, you assume the risk of serious injury.
5. Be courteous and respect others.
6. One user on a feature at a time
7. Never jump blindly- use a spotter when necessary.
8. It is your responsibility to control your body on the ground & in the air.
9. Always clear the landing area quickly
10. Always ride/ski in control & within your ability

Assumption of Risk:

Lift Ticket & Season Pass:

Notice: SKIERS AND SKI LIFT PASSENGERS- are governed by the New York State General Obligations Law, [Article 18](#) and 12 [NYCRR Part 54](#), "Safety in Skiing Code." Before use of your season pass, your attention is directed to the posted "[Warning to Skiers](#)" which is displayed at all points of sale and the base of all lifts. New York Law requires you to seek out, read, review and understand the "Warning to Skiers" before you decide to participate in the sport of skiing.

It is your responsibility to familiarize yourself with all instructions and warnings and to follow "[your responsibility code.](#)"

Warning to Skiers: I understand the winter activities involve numerous risks including, but not limited to, the risks posed by variations in terrain and snow conditions, surface and subsurface snow conditions, icy or firm snow, unmarked obstacles, thin snow cover, bare spots, bumps, moguls, stumps, forest growth and debris, erosion control devices, rocks, cliffs, steep terrain, deep snow, avalanches and other hazards. I also understand skiing and snowboarding involves risks posed by the loss of balance, loss of control, falling, sliding, collisions with other skiers or snowboarders and collisions with natural and man-made objects, including trees, rock, fences, posts, lift towers, snow making equipment, snowmobiles and other over-snow vehicles: and other participants. I acknowledge that it is up to me and/or my child or dependent to have the physical dexterity and knowledge to safely load, ride and unload a lift, and that my child and/or dependent may use lifts without an adult present. I further agree that all of these risks and dangers are necessary to the sports of skiing, snowboarding, and the winter activities. New York Law imposes a duty on you to become apprised of, and understand, the risks inherent in the sport of skiing, which are set forth above, so that you make an informed decision whether to participate in skiing notwithstanding the risks. New York law also imposes additional duties upon you, to which you must adhere, for the purpose of avoiding injury caused by any of the risks inherent in skiing.

Assumption of Risk: I have read and understand the NOTICE above. I have read, reviewed, and understood the WARNING TO SKIERS printed above. In signing the

Swain Resort Terms & Conditions of purchase and using the ticket/season pass, I signify that I am aware of and understand the risks inherent in the sport of skiing and that I am accountable for my action as set forth on the WARNING TO SKIERS signs. If I am purchasing this pass for a minor, I represent that I have read the WARNING TO SKIERS in an age-appropriate manner to the minor, and the minor has acknowledged that they are aware of, understand and accept those risks. I agree that this acknowledgement shall be for the entire term of the ticket/pass. For the entire term, I relinquish my right to a refund of the purchase price of the ticket/pass purchased that is allowable under the Safety in Skiing Code for those persons unwilling to ski because of the risks of the sport or the duties imposed upon skiers by law. All pass applicants must sign the Swain Resort Terms & Conditions before receipt and/or use of season pass.

Rental Equipment - applicable to all rentals:

Notice: I understand and agree that skiing, snowboarding, and other winter sports are HAZARDOUS activities, that injuries from various causes are an inherent risk of participating in these activities, and that injuries to any or all parts of my body are a common and ordinary occurrence during these activities. I freely accept and assume all risks of injury or death that may occur while using this equipment to engage in these activities.

Alpine Systems: I have confirmed that the visual release indicators on the alpine ski bindings are the same as those designated on this ticket. I understand and agree that alpine ski/boot/binding systems CANNOT RELEASE OR RETAIN in all situations where release or retention may prevent injury, that they therefore CANNOT GUARANTEE MY SAFETY, and that undesired release or retention are risks of skiing.

Snowboards: I understand that the binding systems on snowboards are NOT INTENDED TO RELEASE in a fall or upon impact.

Helmets: I understand and agree that no headgear can protect against all foreseeable impacts, that skiing and snowboarding can expose the user to forces which exceed the limits of protection offered by this helmet, that helmets do not guard against injury to the neck, spine, face or any other part of the body, and that these features are inherent risks of skiing and snowboarding. Helmets must be properly fitted to each user, and I agree that this helmet has been properly fitted by the provider. I warrant that the helmet is comfortably snug and that when I fasten the chin strap and shake my head there is no significant movement of the helmet. I agree that if the helmet is damaged or involved in any kind of accident, I will stop using it immediately, return it to the shop and report of accident or damage.

To the fullest extent allowed by law, I agree to RELEASE FROM LIABILITY, and to INDEMNIFY AND HOLD HARMLESS the Elan, Giro/Bell Sports, Burton, and all other manufacturers and distributors of the equipment provided to me under this agreement, any involved winter sport area, shop or service technician, and their owners. Agents, employers and employees for any injuries, damages or death related to use of this equipment. I FURTHER AGREE TO NOT CLAIM OR SUE FOR INJURIES OR DAMAGES RELATING TO THE USE OF THIS EQUIPMENT, whether such a claim is based on NEGLIGENCE, breach of warranty, product defect or any other theory. I accept this equipment AS IS with no warranties, expressed or implied. These waivers and obligations extend to my heirs and assigns.

If this equipment is used by someone other than me, I certify that I am signing it as agent, parent or legal guardian for the user and that I will provide this form and all warnings and information to the user.

Locker Holders:

The notice outlines several important points and rules for locker holders:

1. Responsibility for Lost, Stolen, or Damaged Items: Swain is not responsible for any lost, stolen, or damaged items from your locker. This implies that individuals are responsible for securing their belongings.
2. Non-locker holders are not permitted to be in the locker room or have access to a locker without the locker holder present.
3. All contents must be removed from the locker by April 30. Failure to do so may result in a \$200 off-season storage fee for any items left behind.
4. Behavioral Expectations: Certain behaviors are prohibited in the locker room, including loitering, running, cursing, eating, and drinking, or any other deemed inappropriate behavior by Swain management. Consequences for violating the rules may include loss of locker privileges, loss of lift ticket, and/or loss of season pass.

Damage to Property

Locker holders agree to use all lockers and related facilities in a reasonable and respectful manner. Any damage, defacement, or vandalism to lockers, locks, or surrounding property, whether intentional or due to negligence, is strictly prohibited.

The locker holder accepts financial responsibility for any damage caused by themselves or members of their party and agrees to pay restitution for repair or replacement costs as determined by the facility. The facility reserves the right to pursue restitution and/or prosecution in accordance with applicable New York State law.

Uphill Travel:

1. Definitions: The person who is participating in Uphill Skiing, Snowboarding, or Snowshoeing shall be referred to hereinafter as “guest”. The “undersigned” means only the guest when the guest is age 18 or older OR it means both the guest and the guest’s parent or legal guardian when the guest is under the age of 18. “Released Parties” means Swain Resort, Denton Hill Family & Ski Areas LLC, or any of their respective successors in interest, affiliated organizations and companies, insurance carriers, agents’ employees, representatives, assignees, officers, and owners. The “activity” means taking part in uphill skiing, snowboarding, or snowshoeing and using the ski area facilities.
2. Risks of Activity: The undersigned agree and understand that taking part in the activity can be hazardous and involves the risk of physical injury and/or death. The undersigned acknowledge that the activity is inherently dangerous and fully realize the dangers of participating in the activity. The risks and dangers of the activity include, but are not limited to: falling; slick or uneven surfaces; surface and subsurface snow conditions; bumps; moguls; ice; variations in terrain; rugged mountainous terrain; downed timber; stumps; forest growth; rocks; debris; marked & unmarked obstacles; man-made objects; winch cat cable; snowmaking guns, water and air hoses; lift towers; terrain park elements and features; visibility; collisions; encounters with snowmobiles and/or other motor vehicles; lift loading, unloading, and riding; adverse weather; avalanches; limited access to and/or delay of medical attention; fatigue; exhaustion; dehydration; hypothermia; high elevation; altitude sickness; frostbite; mental distress from exposure to any of the above; and negligence of others. THE UNDERSIGNED ACKNOWLEDGE AND UNDERSTAND THAT THE DESCRIPTION OF THE RISKS LISTED ABOVE IS NOT COMPLETE AND THAT PARTICIPATING IN THE ACTIVITY MAY BE DANGEROUS AND MAY INCLUDE OTHER RISKS.
3. Duties of Guest: The guest acknowledges the responsibility of always maintaining control while engaging in the activity. Guest is responsible for reading, understanding and complying with all signage. Guest acknowledges

that snowmobiles, snowmaking, snow grooming equipment and/or other motor vehicles and equipment may be encountered at any time. Guest understands that entering or skiing in a "CLOSED" area is illegal.

4. Responsibility, indemnification and Assumption of Risk: In consideration of the guest being permitted to participate in the activity, the undersigned agree as follows:

1. Responsibility: THE UNDERSIGNED HEREBY IRREVOCABLY AND UNCONDITIONALLY TAKES SOLE RESPONSIBILITY AND AGREE NOT TO SUE OR BRING ANY OTHER LEGAL ACTION AGAINST THE RELEASED PARTIES with respect to any and all claims and causes of action of any nature whether currently known or unknown, which the undersigned or any of them, have or which could be asserted on behalf of the undersigned in connection with the guest's participation in the activity, including, but not limited to claims of negligence, breach of warranty, and/or breach of contract.
2. Indemnification: The undersigned hereby agree to indemnify, defend and hold harmless the released parties from and against any and all liability, cost, expense, or damage of any kind or nature whatsoever and from any suits, claims or demands, including the legal fees and expenses whether or not in litigation, arising out of, or related to, guests participation in the activity. Such obligation on the part of the Undersigned shall survive the period of the guest's participation in the activity.
3. Assumption of Risk: The undersigned agree and understand that there are dangers and risks associated with the participation in the activity and that INJURIES AND/OR DEATH may result from participating in the activity, including, but not limited to the acts, omissions, representations, carelessness, and negligence of the Released parties. By signing this document, the undersigned recognize that property loss, injury and death are all possible while participating in the activity. RECOGNIZING THE RISKS AND DANGERS, THE UNDERSIGNED UNDERSTAND THE NATURE OF THE ACTIVITY AND VOLUNTARILY CHOOSE FOR GUEST TO PARTICIPATE IN AND EXPRESSLY ASSUME ALL RISKS AND DANGERS OF THE PARTICIPATION IN THE ACTIVITY, WHETHER OR NOT DESCRIBED ABOVE, KNOWN OR UNKNOWN, INHERENT, OR OTHERWISE.

5. **Minor Acknowledgment:** In the case of a minor guest, the undersigned parent or legal guardian acknowledges that he/she is not only signing this agreement on his/her behalf, but that he/she is also signing on behalf of the minor and that the minor shall be bound by all the terms of this agreement. Additionally, by signing this agreement as the parent or legal guardian of a minor, the parent or legal guardian understands that he/she is also waiving rights on behalf of the minor that the minor otherwise may have. The undersigned parent or legal guardian agrees that, but for the foregoing, the minor would not be permitted to participate in the activity. By signing this agreement without a parent or legal guardian's signature, the guest, under penalty of fraud, represents that he/she is at least 18 years of age. If signing as the parent or guardian of a minor guest, signing adults represent that they are a legal parent or guardian of the minor guest.

6. **Medical Care:** Undersigned authorize the Released Parties and/or their authorized personnel to call for medical care for a guest or to transport guest to a medical facility or hospital if, in the opinion of such personnel, medical attention is needed. The undersigned agree to pay all costs associated with such medical care to related transportation.

7. **Helmets:** The undersigned understand that helmets may reduce or mitigate the severity of head injuries to the guest but are in no way a guarantee of safety. The undersigned recognizes that helmets have limited capability as far as shock absorption and that serious injury or death can result from both low and high energy impacts, even when a helmet is worn.

8. **Uphill Use Procedure:** In consideration for permission to access terrain operated and managed by Swain Resort before, during, or after standard operating hours, the undersigned agrees to have reviewed a copy of the Swain Resort Uphill Policy. The undersigned is familiar with the trail names and understands and agrees to follow and observe all terrain listed on the uphill use policy that is closed to uphill use as well as during non-operating hours. At certain times and days there will not be Ski Patrol on duty. So enter at your own risk.

9. Severability: If any provision of this agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this agreement will remain in full force and effect. Any provision of this agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
10. Choice of Law and Forum: The purchaser or user of this ticket agrees that the terms of this agreement will be binding upon him or her and shall be governed by the Laws of New York State, the exclusive jurisdiction for any claim shall be the Supreme Court of the State of New York, Allegany County, New York or the United States District Court for the Western District of New York and that the terms of this document shall be admissible in evidence as a binding legal document between the purchaser or user and Swain Resort.

I understand that Chairlift Riding involves significant risks of serious injury or death. Some of these inherent risks of Chairlift riding include, but are not limited to: activity-related risks (lift failure; falls; stationary or other objects; loss of balance; over-exertion; dehydration; becoming lost or separated from the group); environmental-related risks (exposure to cold or elements; heat-related illness; trees; rocks; tree stumps; logs; roots; loose gravel or sand; holes; depressions; uneven, steep, or slippery terrain; falling or fallen limbs; encountering wild animals; bee stings, ticks or other insects; snakes; poisonous plants; being caught in a sudden change in the weather; being away from immediate emergency medical care); and other risks (inappropriate or negligent actions of co-participants; participant overestimating his/her capacity; weather conditions, or participant ability; faulty or malfunctioning equipment; inappropriate shoes or clothing of participant). I agree that all Downhill Foot Traffic is to be done on the clearly existing and marked trails only. No Downhill Foot Traffic is to occur off-trail, or in closed areas, or non-Swain Resort property.

Special Event

Acknowledgement & Assumption of Risk

I acknowledge that all special events hosted by any and all of the Swain Resort facilities may carry additional risks via additional temporary features, theatrics, special effects, including but not limited to pond skating, freestyle events, races, axe throwing, live music, Snowmobile races, etc.

Participation of Minor

I am the parent or guardian of the minor on whose behalf I have signed this agreement. I have explained the risks inherent in Chairlift Rides, Swain Resort Ski Area & all Special Events hosted by the facilities to my child in an age-appropriate manner and he/she has acknowledged that he/she understands and accepts those risks.

Right of Privacy Release

I agree to the photographing, filming or videotaping of my appearance while visiting Swain Resort and the reproduction of such materials by Swain Resort and its corporate affiliates for Swain Resort's marketing materials ("Materials").

I agree that Swain Resort is, and will be, the sole owner of all rights in and to the Materials and the reproductions thereof. Swain Resort shall have the right, among other things, to reproduce the Materials one or more times for all lawful purposes, including the promotion of Swain Resort's business. Swain Resort shall also have the right to use my name, portrait, picture, and biographical material for such purposes. I agree to hold Swain Resort and any third parties harmless against any liability, loss, or damage, including reasonable attorneys' fees caused by, or arising from, the photographing and reproduction of my appearance for the Materials.

Effect on Legal Rights

I have read this agreement carefully and understand its contents. I have read this agreement to my child, and he/she has acknowledged that he/she understands its contents. I am aware that the agreement includes an express assumption of risk. I understand that this agreement may affect legal claims for damages in the event of death or any injury to me or my child. I acknowledge that any questions I or my child have about this agreement or the risks inherent in participating in the Chairlift Rides, Swain Resort Ski Area & all Special Events and have been answered to my and my child's satisfaction. I have signed this document of my own free will.

Controlling Law/Venue

I agree that the terms of this entire agreement are binding on me and my child and shall be governed by the Laws of the State of New York. I agree that all disputes and/or lawsuits arising from use of the facilities at Swain Resort or in anyway related to this agreement shall be litigated exclusively in the Supreme Court of the State of New York, County of Allegany, or in the United States District Court for the Western District of New York

Inclement Weather

I understand that hours, conditions and activities of Swain Resort are dependent upon weather. No guarantees or refunds will be distributed.

Severability

If any part, term or provision of this Agreement is held to be illegal, in conflict with any law or otherwise invalid, the remaining portion or portions shall be considered severable and not be affected by such determination, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provisions held to be illegal or invalid.