

# ***By Foot Again, LLC***

## **Assumption of Risk, Waiver of Liability, and Indemnification Agreement**

### **(Does Not Apply for Activities within Valley Forge National Historical Park)**

**Nature of the Activity:** By Foot Again, LLC (hereafter referred to as BFA) is a business that provides instruction, private classes, and group classes in Nordic Walking. Nordic walking is a type of fitness walking utilizing specially designed poles that has evolved from ski-training into a popular year-round exercise activity that is appropriate for all ages and most fitness levels. Some of the benefits of this healthful, outdoor exercise include: increases cardiovascular fitness; increases caloric consumption; weight control; tension reduction; strengthens leg, arm, abdominal, and other muscle groups; improves stamina and muscular endurance; improves posture and balance; and provides an opportunity for positive social interaction with others. While there are many benefits to Nordic walking, BFA feels it is important that the PARTICIPANT/PARENT (which refers to **either** an ADULT Participant, **OR** a MINOR Participant and his/her PARENTS/GUARDIANS) understands that Nordic walking, like all fitness activities, involves some risks of injury that are inherent to the activity.

Some of these inherent risks of the activity include, but are not limited to: *activity-related risks* (blisters, muscle soreness, falls, tripping, over-exertion, dehydration, exposure, snow-related walking hazards, becoming lost or separated from the group, falls due to surfaces in the parking lot, being struck by a car in the parking lot); *environment-related risks* (stepping in holes, walking on uneven terrain, falling limbs, encountering wild animals, bee stings, ticks or other insects, snakes, poison plants, being caught in a rainstorm or sudden change in the weather, third party equipment or animals on the trail, being away from immediate emergency medical care); *conditions of the participant* (dizziness, fainting, diabetic shock, poor vision, and cardiovascular condition); and *other risks* (inappropriate actions of co-participants including careless handling of hiking poles, a participant overestimating his/her capacity; instructor misjudgment of environment, weather conditions, suitability of terrain, participant ability, or choice of reaction to emergency; faulty or malfunctioning equipment; inappropriate shoes or clothing of participant; exposure to infectious diseases). **While it is impossible to eliminate all risk and possibility of injury**, BFA always focuses on the safety of the participant during both the instruction and participation phases of the activity – providing safety-related rules and policies as well as professional supervision.

BFA feels that it is important that the PARTICIPANT/PARENT understands the three types of injuries that can result from Nordic walking risks. First is the common *Minor Injury*. This type includes, but is not limited to, muscle strains and sprains, bruises, abrasions, contusions, rashes, and getting chilled or soaked. The second type of injury is the *Serious Injury*. Examples of serious injuries are microbial and viral diseases, broken bones, ligament and joint injuries, concussions, allergic reaction, heat stroke, and eye injury. These are rare, but do occasionally occur. The third type of injury is the *Catastrophic Injury*. Some examples of catastrophic injury are Lyme disease, COVID-19 disease, brain injury, paralysis, heart attack, and death. Even though the likelihood of such an injury is very remote, we feel that the PARTICIPANT/PARENT should be aware of all possibilities.

**Assumption of Inherent Risks:** I, the PARTICIPANT/PARENT, have read the above paragraphs and **know** that Nordic walking involves inherent risks. **I understand the demands** of Nordic walking relative to my physical condition and skill level, and **I appreciate the types of injuries** that may occur as a result of Nordic walking activities and their potential impact on my well-being and lifestyle. **I hereby assert that my participation with BFA is voluntary and that I knowingly assume all inherent risks.**

\*\*\*\*\*

**Waiver of Liability for Ordinary Negligence:** In consideration of permission to participate in BFA activities and services, today and on all future dates, **I**, the PARTICIPANT/PARENT, on behalf of myself, my spouse, my heirs, personal representatives, and assigns [hereafter referred to as *Releasing Parties*] **do hereby release, waive, discharge, and covenant not to sue BFA**, its owner, employees, volunteers, independent contractors, equipment providers, and agents, as well as the owners of property on which BFA activities take place (excluding NPS lands) and its employees [hereafter referred to as *Protected Parties*] from liability **from any and all claims arising from the ordinary negligence** of BFA or the *protected parties*.

This agreement applies to 1) personal injury (including death) from incidents or illnesses arising from participation in BFA activities (including, but not limited to, instruction, private one on one classes, group classes, observation, individual use of facilities or equipment, equipment failure, and all premises including any associated sidewalks and parking lots); and to 2) any and all claims resulting from the damage to, loss of, or theft of property.

\*\*\*\*\*

**Indemnification Agreement:** I, the PARTICIPANT/PARENT, **agree to hold harmless, defend, and indemnify BFA and Protected Parties** (that is, defend and pay any judgment and costs, including investigation costs, attorney's fees and related expenses) from any and all claims of the *Releasing Parties* arising from my injury or loss due to my participation at BFA (including claims arising from the inherent risks of BFA activities and those arising from the **ordinary negligence** of BFA or *Protected Parties*).

**I further agree to hold harmless, defend, and indemnify BFA and Protected Parties** (that is, defend and pay any judgment and costs, including investigation costs and attorney's fees) against any and all claims of co-participants, rescuers, and others arising from my conduct in the course of my participation at BFA (including claims arising from the inherent risks of BFA activities and those arising from the **ordinary negligence** of BFA or *Protected Parties*).

\*\*\*\*\*

**Mediation and Arbitration:** In the event any dispute arises, I, the PARTICIPANT/PARENT, agree to engage in good faith efforts to **mediate** a settlement. Any agreement reached will be formalized by a written contractual agreement at that time. Should the issue not be resolved by mediation, I agree that all disputes, controversies, or claims arising out of my participation at BFA shall be submitted to **binding arbitration** in accordance with the applicable rules of the American Arbitration Association then in effect.

**Clarifying Clauses: 1)** I, the PARTICIPANT/PARENT, confirm that this agreement supersedes any and all previous oral or written promises or agreements. I understand that this is the entire agreement between me and BFA and cannot be modified or changed in any way by representations or statements by any agent or employee of BFA. **2)** I further expressly agree that the foregoing Assumption of Risk, Waiver of Liability, and Indemnification Agreement is intended to be as broad and inclusive as is permitted by the laws of the Commonwealth of Pennsylvania and that **if any portion thereof is held invalid**, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect. **3)** I also understand that if legal action is brought, the appropriate trial court for the County of Montgomery in the Commonwealth of Pennsylvania has the sole and **exclusive jurisdiction** and that only the substantive laws of the Commonwealth of Pennsylvania shall apply.

**In order for BFA to more effectively provide for the safety of the participant, BFA asks PARTICIPANT/PARENT to help us by certifying the following:** I, the PARTICIPANT/PARENT,

**Rules & Actions**

- agree to attempt only walks which I feel I am capable of performing safely.
- agree to stay in areas or on trails that will not place me in undue danger.
- agree to obey all safety rules and alert the leader to any violations or dangerous behavior of co-participants.

**Health & Safety**

- possess a sufficient level of skill and physical fitness for safe participation in BFA Nordic walking.
- have no health problems that would make participation in BFA Nordic walking unwise.
- acknowledge that BFA encourages each client to get medical clearance prior to participation.
- authorize BFA to administer emergency first aid or CPR and to secure emergency medical care or transportation (i.e., EMS) when deemed necessary by BFA; I agree to assume all costs of emergency medical care and transportation.
- acknowledge that it is the participant's duty to inform staff and cease exercise immediately if he/she feels any unusual discomfort (e.g., faintness, shortness of breath, high anxiety, chest pains) during participation.
- acknowledge that the provider may need to end my participation if I present a danger to myself or others.

**Acknowledgment of Understanding: I, the PARTICIPANT/PARENT, have read** this Assumption of Risk, Waiver of Liability, and Indemnification Agreement and **fully understand** its terms and acknowledge that it shall be effective and binding upon myself, my heirs, assigns, personal representative and estate and for all members of my family, including minor children. I understand that I am **giving up substantial rights**, including my right to sue. I further acknowledge that I am signing the agreement freely and voluntarily, and intend my signature to be a **complete and unconditional release of all liability** due to 1) **ordinary negligence** by BFA and the *Protected Parties* or to 2) the **inherent risks** of Nordic walking, to the greatest extent allowed by law in the Commonwealth of Pennsylvania.

\_\_\_\_\_  
Name of PARTICIPANT (Please Print)      Date

\_\_\_\_\_  
Signature of PARTICIPANT

**If Participant is a Minor, Parent/Guardian Must complete the following:**

\_\_\_\_\_  
Name of Parent/Guardian #1      Signature of Parent/Guardian #1      Date

\_\_\_\_\_  
Name of Parent/Guardian #2      Signature of Parent/Guardian #2      Date