

AMENDED AND RESTATED  
MEMORANDUM OF UNDERSTANDING

Between

BRIAR CHAPEL COMMUNITY ASSOCIATION, INC And  
The SOUTHERN OFF-ROAD BICYCLE ASSOCIATION (TRIANGLE OFF  
ROAD CYCLISTS CHAPTER) Regarding

Briar Chapel Community, Located in Chatham  
County, North Carolina

This Amended and Restated Memorandum of Understanding (this "MOU") is made and entered into between Briar Chapel Community Association, Inc. (hereinafter referred to as "BCCA"), and the Triangle Off Road Cyclists (TORC) (hereinafter referred to as "TORC") Chapter of the Southern Off-Road Bicycle Association, (hereinafter referred to as "SORBA", or collectively with TORC, "SORBA/TORC").

WHEREAS, BCCA and SORBA/TORC agree and intend for this MOU to amend and restate, in its entirety, and replace, any previous agreements or memorandums of understanding, which are hereby deemed null and void.

I. INTRODUCTION

BCCA is a homeowner-controlled, planned community located in Chapel Hill, North Carolina, offering thoughtfully designed homes, inclusive community engagement, beautiful trails and similar intentionally designed amenities. As such, BCCA is dedicated to providing park lands for a variety of uses, activities, and outdoor recreation opportunities, including off-road trail bicycling that is environmentally responsible, educational, and provides residents and the general public with healthy and safe outdoor experiences and an improved quality of life.

Triangle Off-Road Cyclists (TORC) is a 501-(c)(3) organization dedicated to ensuring the future of mountain biking in the Triangle area. SORBA is a non-profit organization which represents the offroad bicycling public in the Southeast, and is the recognized leader in establishing trail bicycling ethics, education, safety, trail construction and design standards, volunteerism, and appropriate land use management on local, State, and Federal public lands, and on certain privately-owned lands available for public use at certain specified locations.

BCCA and SORBA/TORC share common interests including the preservation of natural areas and greenspaces, providing for environmentally friendly nature-based Recreation Opportunities and Experiences ("ROE") for individuals and families, and educating the public regarding responsible recreational land use.

SORBA/TORC has requested the opportunity to construct and maintain multi-use trails on property owned by BCCA in Chatham County. A "Multi-use trail" is herein defined as a natural-surface single-track path, generally through a wooded area or other naturalized region, open to off-road cyclists, walkers, and hikers. Motorized vehicles are prohibited.

## II. PURPOSE

The purpose of this MOU is to establish a framework of cooperation upon which mutually beneficial programs, work projects, and bicycling activities (collectively, the “Project” or “Projects”) may be planned and accomplished by BCCA and SORBA/TORC working cooperatively within the Briar Chapel Community in Chatham County, North Carolina. Such programs, projects, and activities will complement the amenities located at the Project and will further promote the interest of the general public.

In consideration of the above premises, the parties agree as follows:

## III. BCCA’S OBLIGATIONS

BCCA SHALL:

1. Make available certain land in locations designated by BCCA (the “Property”, as further described in Exhibit A, attached hereto and incorporated by reference), in its sole discretion, to be used as trails for off-road cycling (also referred to as mountain biking) by BCCA residents, TORC and the public, at their own risk, throughout the 10-year agreement as signed, subject to applicable laws, regulations, and other recreational management directions including any restrictions and limitations as deemed appropriate by BCCA.
2. Procure an assessment of the current trail system and proposals for future trail development, enhancement and maintenance (the “Plan”). BCCA, in its sole discretion, shall select assessors, contractors, surveyors or the like to conduct the assessment and Plan.
3. Allow construction of new trails and related Projects in line with BCCA’s Purpose to fulfill goals of optimum ROE using published trail construction guidelines as established by the International Mountain Bicycling Association (“IIVIBA”). Such construction may include, but is not limited to, new trails, the modification of existing trails, various structures to support the maintenance and longevity of the trails system, and other related enhancements. Any and all construction, enhancement or modification of the trails must be approved in writing by BCCA and a qualified SORBA/TORC representative, at least thirty (30) days prior to commencement of construction.
4. Allow trail maintenance and re-routes, including trail closure when mutually deemed necessary, for environmental sustainability.
5. Encourage participation between the BCCA and SORBA/TORC members in the development of mutually beneficial work projects and bicycling related recreational and educational activities.
6. Provide improvements in its discretion, including signage and information kiosks necessary to support multi-use trails.
7. Provide access to the Briar Chapel trails system for TORC- and SORBA/TORC-sponsored cycling events with the prior approval of the BCCA as further detailed in Section IV (2) below.

#### IV. SORBA/TORC's OBLIGATIONS

##### SORBA/TORC SHALL:

1. Develop proposals for work projects throughout the Property, all in conformity with the BCCA Board's Plan, which work projects may include but are not limited to construction of new trails, re-routing or modification of existing trails, and/or building structures (i.e., bridges, berms, etc.), to be submitted to General Manager of the BCCA for BCCA's review, consideration and possible approval. If approved, all Projects must proceed in accordance with the following:
  - a Upon BCCA's written approval of Plans, such approval in BCCA's sole discretion, and at locations designated by BCCA, TORC will provide volunteers to layout, design, and construct multi-use trails in the Project.
  - b If applicable, State regulated and permitted reclaimed irrigation is installed throughout BCCA property and owned/maintained by Old North State Water Company (ONSWC), including areas currently in use or under consideration for future use by the trail system. All submitted plans should indicate locations of irrigation heads and during construction and maintenance the pipes and spray heads should not be tampered with. Damage to any reclaimed irrigation equipment should be reported immediately to the BCCA.
  - c All trails will be constructed to current IIVIBA standards and shall be designed to be environmentally sensitive, control erosion and be sustainable over time.
  - d Construction may be performed using hand tools or by small walk-behind motorized equipment operated by experienced trail builders.
  - e All projects will be supervised by trained and experienced Crew Leaders and/or by BCCA's personnel. Safety of volunteers will be of primary importance at all times.

Further, SORBA/TORC acknowledges that State of North Carolina regulated and permitted reclaimed irrigation is installed throughout BCCA property and is owned and maintained by Old North State Water Company ("ONSWC"), including areas currently in use or under consideration for future use by the trails system. All SORBA/TORC submitted plans should indicate locations of irrigation heads and during construction and maintenance the pipes and spray heads should not be tampered with. Damage to any reclaimed irrigation equipment should be reported immediately to the BCCA, and, in the event of emergency, be escalated to ONSWC as necessary.

2. Work in conjunction with the BCCA to obtain reasonable prior approval of access to and use of the Briar Chapel trails system for TORC- and SORBA/TORC-sponsored cycling events. Such approval shall be requested to the General Manager of the BCCA electronically or in writing no less than fourteen (14) days in advance of such event, and each event must comply with all of the insurance, indemnity, and related safety obligations as further contemplated herein.
3. Organize and provide volunteers to perform ongoing maintenance of existing and newly constructed mountain biking trails.

4. Without exception, collect and maintain volunteer waivers for all volunteers (including but not limited to event volunteers, trail construction and maintenance volunteers, etc.) (the “Volunteers”). All Volunteers are required to sign TORC or SORBA/TORC volunteer waiver which extends TORC liability coverage to the volunteer for the work performed or relevant activity occurring on or about the trails. SORBA/TORC will provide copy(ies) of all volunteer waivers to the BCCA upon request, and SORBA/TORC must maintain each volunteer waiver for a minimum of one (1) year from the date of the event.
5. Promote proper trail etiquette and instruction to its members and other trail users to encourage safe and responsible trail usage and to prevent user conflict.
6. Provide technical assistance to BCCA on other bicycling related work projects, educational activities, and bicycling opportunities and encourage its members to work with BCCA to discuss and identify opportunities for cooperative work on mutually beneficial projects or activities.

#### V. INDEMNITY & INSURANCE

1. *Indemnity.* TORC and SORBA/TORC hereby covenant and agree they will at all times indemnify, defend (with counsel reasonably approved by BCCA), and hold safe and harmless BCCA and its agents, employees, officers, managers, members, and interest owners, from any loss, liability, claims, suits, costs, expenses, including without limitation attorney’s fees and damages, both actual and alleged, incurred by BCCA or its agents, employees, officers, managers, members, and interest owners arising out of, resulting from, or related to the use, access or occupancy of the Property by TORC and/or SORBA/TORC, or its officers, directors, employees, agents, independent contractors, guests and invitees; or arising out of a breach by TORC or SORBA/TORC of any provision of this MOU; or arising out of the conduct by TORC or SORBA/TORC, or its officers, directors, employees, agents, independent contractors, guests and invitees, in the course of their use or access on or about the Property.

The terms of this paragraph (c) are a material consideration and inducement to BCCA to enter into this MOU, and but for the inclusion of such provision in this MOU, BCCA would not enter into this MOU. The terms and conditions hereof shall survive the performance of all agreements, covenants and conditions set forth herein, or the termination hereof.

2. *Insurance Requirements.* Throughout the Term of this MOU, and to secure its indemnification obligations as set forth above, SORBA/TORC, at its sole cost and expense, shall obtain and maintain commercial general liability insurance, naming BCCA as additional insured, with limits not less than one million dollars (\$1,000,000) per occurrence, which policy shall insure against liability of SORBA/TORC, arising out of and in connection with the use of and activity on or about the Property by SORBA/TORC and/or its officers, directors, employees, agents, independent contractors, guests and invitees, and which shall insure the indemnity provisions contained in this MOU. All policies of insurance herein referred to shall be in a reasonably acceptable form. All such policies shall contain a provision prohibiting the insurer from terminating such coverage until after a period of thirty (30) days following notice of termination or proposed cancellation given to BCCA, provided that such

notice period will be ten (10) days for cancellation for nonpayment of premium. SORBA/TORC's commercial general liability insurance shall be primary and non-contributory to any insurance available to BCCA and BCCA's insurance, if any, shall be in excess thereto. Premiums for all such policies and all renewals thereof shall be paid by SORBA/TORC as provided above, on or before the beginning date of the next annual policy or renewal period. If SORBA/TORC shall at any time fail to insure or keep insured as aforesaid, BCCA may deem such failure an event of Default as further defined in this MOU. Upon request by BCCA, SORBA/TORC shall provide a certificate of insurance attesting to the affirmative and active coverage as required herein.

## VI. MISCELLANEOUS PROVISIONS

IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND BETWEEN THE SAID PARTIES THAT:

1. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties of this MOU will be set forth in a separate written agreement between the parties hereto in accordance with applicable laws, regulations, and procedures. This MOU does not provide such authority. Specifically, this MOU does not establish authority for noncompetitive award to SORBA/TORC of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.
2. This MOU in no way restricts the BCCA from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
3. Nothing in this memorandum shall obligate BCCA to SORBA/TORC to expend appropriations or to enter in any contract or other obligations.
4. This MOU may be modified or amended upon written consent of both parties.
5. For convenience, each party may terminate this MOU upon sixty (60) days written notice to the other party hereto.
6. This Agreement may be immediately terminated at the election of BCCA upon thirty-six (36) hours written notice to SOBRA/TORC, upon the occurrence of any of the following events (each, a "Default") and after any applicable cure period has passed:
  - a SOBRA/TORC's breach of any covenant or failure to perform any obligation under this Agreement which is not cured within thirty (30) days after written or electronic receipt of notice of such D from BCCA; however, if the default is of a nature that SORBA/TORC needs more than 30-days to cure, and provided SORBA/TORC commences such cure within 30 days and diligently prosecutes the same to completion (giving BCCA updates with respect to its progress in perfecting the cure), then the default will be deemed to be "cured"; or

- b the failure of SORBA/TORC to comply with any legal requirements applicable to SORBA/TORC in performing its obligations hereunder, including any lapse in insurance or other safety related obligations. If SORBA/TORC proceeds to remedy any violation or non-compliance issue with respect to legal requirements within fourteen (14) days of receipt of notice of such violation (or sooner if BCCA is cited or fined due to such non-compliance by SORBA/TORC), and BCCA are not cited or fined due to SORBA/TORC's violation(s), then the default shall be deemed to be cured.
7. This MOU shall have a term of ten (10) years unless terminated earlier in accordance with the terms hereof BCCA shall have the right, with SORBA/TORC's written consent, to extend this MOU for an additional five (5) year term. Any such extension shall be memorialized in writing by the parties and all of the terms and conditions of this MOU shall remain in full force and effect.

*[Signature Page to Follow]*

In WITNESS WHEREOF, the parties hereto have executed this MOU as of the last written date below

**Briar Chapel Community Association, Inc.**

1600 Briar Chapel Pkwy  
Chapel Hill, NC 27516

By: *Liz Rolison*  
Liz Rolison (Oct 25, 2023 11:45 EDT)  
Name: Liz Rolison  
Title: BCCA, President  
Date: 25-Oct-2023

**Triangle Off-Road Cyclists (TORC)**

PO Box 4490  
Cary, NC 27519

By: *Mark Brothers*  
Mark Brothers (Oct 26, 2023 08:32 EDT)  
Name: Mark Brothers  
Title: President  
Date: 26-Oct-2023

**TORC – Chapter of the Southern Off-Road Bicycle Association**

691 Pisgah Rd  
Ellijay, GA 30536

By: *Mark Brothers*  
Mark Brothers (Oct 26, 2023 08:32 EDT)  
Name: Mark Brothers  
Title: President  
Date: 26-Oct-2023

[Signature Page – BCCA and SOBRA/TORC MOU]

**EXHIBIT A  
PROPERTY**

[Insert Trail Map]

4869-8533-7215, v. 1



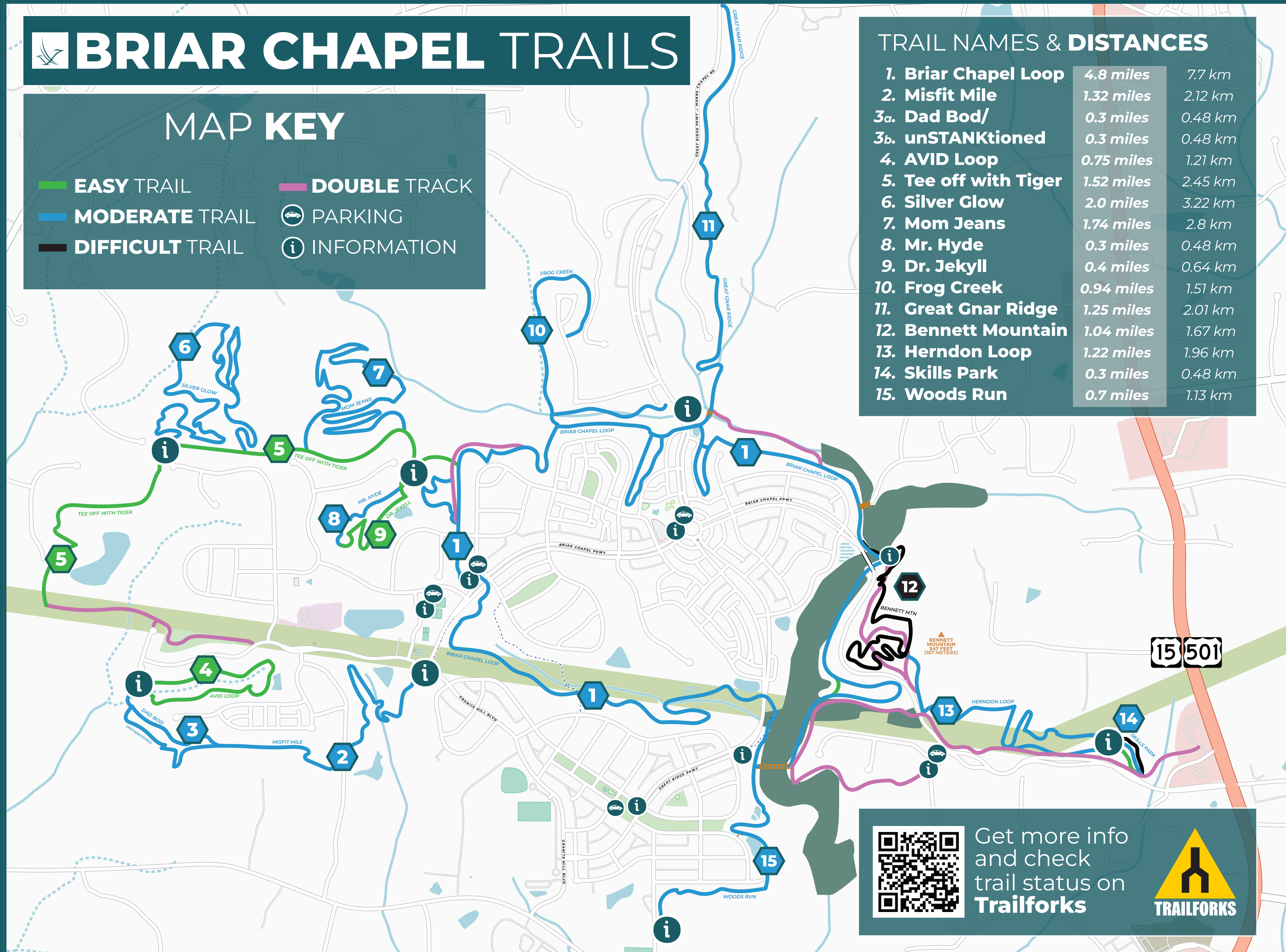
# BRIAR CHAPEL TRAILS


## MAP KEY

- EASY TRAIL
- MODERATE TRAIL
- DIFFICULT TRAIL
- DOUBLE TRACK
- PARKING
- INFORMATION


## TRAIL NAMES & DISTANCES

1. Briar Chapel Loop	4.8 miles	7.7 km
2. Misfit Mile	1.32 miles	2.12 km
3a. Dad Bod/ 3b. unSTANKtioned	0.3 miles	0.48 km
4. AVID Loop	0.75 miles	1.21 km
5. Tee off with Tiger	1.52 miles	2.45 km
6. Silver Glow	2.0 miles	3.22 km
7. Mom Jeans	1.74 miles	2.8 km
8. Mr. Hyde	0.3 miles	0.48 km
9. Dr. Jekyll	0.4 miles	0.64 km
10. Frog Creek	0.94 miles	1.51 km
11. Great Gnar Ridge	1.25 miles	2.01 km
12. Bennett Mountain	1.04 miles	1.67 km
13. Herndon Loop	1.22 miles	1.96 km
14. Skills Park	0.3 miles	0.48 km
15. Woods Run	0.7 miles	1.13 km





Get more info and check trail status on **Trailforks**



**I, the undersigned, in consideration of being permitted to participate in any way in the above Activity, hereby agree that:**

1. I understand and agree that I am aware of the risks and dangers associated with participation in and transportation to and from this Activity and that I am qualified, in good health, and in proper physical condition to participate in such Activity.
2. I understand and agree that the Southern Off-Road Bicycling Association (SORBA), Triangle Off-Road Cyclists (TORC), other participants, any sponsors or advertisers, and, if applicable, owners and lessors of premises on which the Activity takes place, and their respective administrators, directors, agents, officers, volunteers, employees, and contractors (each considered one of the "RELEASEES" herein) shall not be legally responsible for any damage, injury, or loss resulting from any cause, including negligence.
3. I understand and agree that any equipment that I provide or borrow from TORC or any other RELEASEE is used at my own risk. I understand and agree that neither TORC nor any other RELEASEE shall be liable for any damage, injury, or loss resulting from the use of said equipment.
4. In consideration of being allowed to participate in this activity, I personally assume all risks in connection with this Activity and agree to **RELEASE, HOLD HARMLESS, INDEMNIFY, and COVENANT NOT TO SUE** SORBA, TORC, other participants, any sponsors or advertisers, and, if applicable, owners and lessors of premises on which the Activity takes place, and their respective administrators, directors, agents, officers, volunteers, employees, and contractors for any death, injury, damage or other loss which may occur in connection with this Activity
5. I authorize TORC and any other RELEASEE to photograph, tape, film, or make an audio recording of my participation in the Activity. I grant TORC and all other RELEASEES, including but not limited to any sponsors or advertisers, irrevocable license to reproduce, copy, display, perform, or otherwise use these materials. I understand and agree that these materials may be used for the purpose of promotion and/or education. I release TORC and all other RELEASEES, including but not limited to any sponsors or advertisers, from any liability connected with the publication, reproduction, release, or other use of these materials, and agree not to bring any claims against them growing out of such publication, release, reproduction, or other use of these materials.
6. The terms of this agreement shall serve as a release and waiver of liability, assumption of risk and indemnity agreement for myself, my personal representatives, executors, administrators, assignees, heirs, next of kin, and all members of my family, including any minors accompanying me.
7. I am legally competent to sign this release or my parent or guardian has also read and signed this release.

**I HAVE READ THIS AGREEMENT, FULLY UNDERSTAND ITS TERMS, UNDERSTAND THAT I MAY HAVE GIVEN UP SUBSTANTIAL RIGHTS BY SIGNING IT, AND HAVE SIGNED IT FREELY, WILLINGLY AND WITHOUT ANY COERCION, INDUCEMENT OR ASSURANCE OF ANY NATURE AND INTEND IT TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY LAW AND AGREE THAT IF ANY PORTION OF THIS AGREEMENT IS HELD TO BE INVALID THE BALANCE, NOTWITHSTANDING, SHALL CONTINUE IN FULL FORCE.**









# TORC\_BCCA\_MOU\_10.23

Final Audit Report

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