STATE OF NORTH CAROLINA ORANGE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 25CV002097-670

TRIANGLE LAND CONSERVANCY,

Plaintiff,

v.

UNION GROVE FARM, INC.; BANDIT FARMS II, LLC; BANDIT FARMS III, LLC; EASTWEST ORGANICS, LLC; HARPER GRACE, LLC; MEREDITH G. SABYE,

Defendants.

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS (N.C. R. Civ. P. 12(b)(6))

NOW COMES Plaintiff Triangle Land Conservancy ("TLC"), by and through undersigned counsel, and hereby submits the following Memorandum of Law in Support of its Motion to Dismiss the Counterclaims of Defendants Union Grove Farm, Inc., Bandit Farms II, LLC and Bandit Farms III, LLC (the "Counterclaim Defendants") pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

I. OVERVIEW AND SUMMARY.

This case involves an ongoing dispute between Plaintiff, Triangle Land Conservancy ("TLC"), a North Carolina non-profit corporation which holds a conservation easement on property known as the Union Grove Farm in Orange County and Defendants, who each own either a fee simple or leasehold interest in Union Grove Farm. Only three of the Defendants, Union Grove Farm, Inc., Bandit Farms, II LLC and Bandit Farms III LLC are Counterclaim Defendants. The Counterclaims allege TLC breached a verbal contract to amend the terms of the Conservation Easement. TLC contends there was no contract and hence, no breach.

Electronically Filed Date: 6/11/2026 4:01 PM Orange Superior Court County Clerk of Superior Court

The conservation easement is entitled "Mapleview Farm Easement" and was granted to TLC in 1995 by the former fee simple owners Robert and Aubrey Nutter (the "Conservation Easement"). The property subject to the Conservation Easement is approximately 107 acres (the "Conservation Property"), and its uses and development are governed by, *inter alia*, the terms of the Conservation Easement. While the entire 107 acres was owned solely by the Nutters at the time the Conservation Easement was created, it has since been subdivided and sold to five different owners, including Defendants Bandit Farms II, LLC and Bandit Farms III, LLC.[1] Defendant Union Grove Farm, Inc. ("UGF") leases several parcels from the Bandit Farms LLCs and is not a party to the Conservation Easement. Counterclaim ("CC"), ¶ 11.

The express "purposes" of the Conservation Easement are:

> to protect in perpetuity the open space character, agricultural productivity, watershed protection, and scenic qualities of the Property (collectively the "Conservation Values") and to assure the availability of the Property in perpetuity for agricultural use.

See Conservation Easement, CC, Ex. A, p. 2.

It is TLC's position that since acquiring the Conservation Property from the Nutters, Defendants have consistently attempted to develop it for more uses and at greater intensities than the Conservation Easement allows. At bottom, it appears Defendants want to operate the Conservation Property as a profitable business open to the public, while TLC is seeking to protect the Conservation Values and further the purposes of the Conservation Easement. The Complaint and Counterclaims arise from the continued tension and ongoing disagreements between the parties over the use and development of the Conservation Property.

---

[1] A map from Orange County GIS is attached to this Brief as Attachment A and shows the fee simple owners of the Conservation Property. The Court can take judicial notice of matters of public record in a Rule 12(b)(6) motion to dismiss. *See, e.g.*, *Anderson Creek Partners, L.P. v. Cnty. of Harnett*, 275 N.C. App. 423, 854 S.E.2d 1 (2020), *rev'd on other grounds*, 382 N.C. 1, 876 S.E.2d 476 (2022).

TLC's Complaint first alleges that Defendants constructed three new roads in violation of the Conservation Easement and asks the Court to require their removal.[2] *See* Complaint ["Cmplt"], First and Second Causes of Action.

Second, the Complaint asks the Court to declare that Defendants' proposed 2,500-seat music amphitheater is also prohibited by the Conservation Easement. *See* Cmplt, ¶¶ 81-90. Defendants had previously asked the Orange County Planning Director to make an official determination that the proposed amphitheater was "agritourism" and, thus, exempt from the zoning and other requirements of the County's Unified Development Ordinance (the "UDO"). Cmplt, Ex. J. TLC and a group of neighbors, unrelated to TLC and represented by separate counsel, each asked the County to deny the agritourism exemption. *See* Cmplt, Ex. I. The Planning Director ruled against the Defendants and held the amphitheater was prohibited by the UDO. Cmplt, Ex. J. TLC's Complaint asks that the Court declare that, in addition to constituting a zoning violation, Defendants' proposed amphitheater is also prohibited by the Conservation Easement. *See* Cmplt, Third and Fourth Causes of Action.

TLC issued the first road construction violation on November 27, 2023. Thereafter, in March 2024, TLC staff and UGF founder Greg Bohlen had on-site discussions about a potential resolution of the parties' differences. The conversations related to potential amendments of the Conservation Easement to, *inter alia*, update its 30-year-old terms, provide less restrictions in certain areas of the Conservation Property, and allow additional restrictions in other areas. An enforceable contract to accomplish this result would have required a rewrite and amendment of the Conservation Easement signed by all Conservation Property owners, a survey of the modified

[2] TLC has included information from its Complaint for background purposes, but the 12(b)(6) is based solely on the Counterclaim Defendants' allegations and other related documents referenced or relied upon in the Counterclaims.

areas, and multiple other steps, including written approval by the TLC Board of Directors. None of these steps have ever occurred.

The Counterclaim Defendants allege that a March 2024 email from a TLC employee, Stewardship Manager Hannah Royal (the "Royal Email"), constituted an enforceable confirmation of a verbal agreement between Counterclaim Defendant UGF and TLC to revise the Conservation Easement to allow the expansion of an area of the Conservation Property called the "Farm Envelope." CC, Ex. B The Farm Envelope allows more buildings and structures than other areas on the Conservation Property. The Counterclaims seek: 1) specific performance; and 2) money damages for breach of contract. The money damages claim, which is the second counterclaim, is alleged on behalf of UGF only, and alleges financial losses suffered by only UGF. According to the Counterclaim Defendants, TLC intended on honoring this alleged email and/or verbal agreement until they were pressured by a group of Union Grove Farm neighbors to renege on the alleged prior oral promise. The Counterclaim Defendants also allege TLC became a "mouthpiece" for the neighbors and breached the nonexistent contract in an effort to do the neighbors' bidding.[3] CC, ¶¶ 55-57.

It is TLC's position that Counterclaim Defendants' breach of contract claims are unfounded, nonjusticiable, and belied by their own allegations and the undisputed documents attached to and referenced in their counterclaims. As an initial matter, the only entity the

[3] TLC disputes the Counterclaim Defendants' bizarre fabrication of an alleged conspiracy with these neighbors, but even if true, neighborhood opposition is common in land use cases and has no relevance whatsoever to the existence of a contract between TLC and UGF and whether that alleged contract was breached. Similarly, their contention that Defendants' Conservation Easement violations should be excused because TLC has not similarly enforced against other landowners is also irrelevant. TLC disagrees with those unsupported statements; however, TLC is not a government entity, so regardless is not subject to equal protection limitations against discriminatory enforcement.

Counterclaim Defendants allege entered into an agreement with TLC was UGF. UGF is not, however, a Conservation Property owner nor a party to the Conservation Easement. Thus, UGF had no authority to bind the actual Conservation Property owners or unilaterally enter into an agreement to modify the Conservation Easement's terms. The Counterclaims also do not include all the Defendant fee simple owners, and the Court cannot enter a decision that would bind these absent necessary parties to new Conservation Easement terms.

In addition, the Royal Email and the TLC Board of Directors' action upon which the alleged email agreement was based, establish as a matter of law that: 1) no contract was ever created because at best there was only an agreement to agree; and 2) even assuming *arguendo* there was a verbal agreement between the proper parties to amend the Conservation Easement (which TLC disputes), the Royal Email fails to satisfy the statute of frauds. TLC, thus, asks its Motion to Dismiss be granted.

II. STATEMENT OF THE CASE.

Plaintiff filed the original Complaint on August 15, 2025. On September 22, 2025, the Counterclaim Defendants filed an Answer to TLC's Complaint and the two counterclaims alleging breach of the alleged Royal Email contract and requesting specific performance and money damages. TLC responded to the counterclaims on November 18, 2025 by filing the current Motion to Dismiss.

There is another motion and order that has relevance to this motion. Specifically, on September 11, 2025, Defendant EastWest Organics, LLC filed a motion alleging that it should be dismissed from the lawsuit as a party because none of the alleged wrongful acts in the Complaint, *i.e.,* the construction of the unlawful roads and the proposed construction of an amphitheater, occurred on the Conservation Property parcel that EastWest owns. In response, TLC argued that

under controlling law, all owners of the Conservation Property were required to be joined in the lawsuit to obtain an enforceable and binding declaratory judgment interpreting the terms of the Conservation Easement. By an Order dated December 19, 2025, Judge Thomas Currin denied EastWest's motions to dismiss.[4]

III. STATEMENT OF THE FACTS AND THE COUNTERCLAIM ALLEGATIONS RELEVANT TO TLC'S RULE 12(B)(6) MOTION.

A. The Relevant Written Documents.

1. The Royal Email.

The Royal Email is attached to the Counterclaims as Exhibit B. It is dated March 18, 2024 and is entitled "Draft: Conservation Easement Updates." It provides as follows:

"Hello, Greg and Meredith

I wanted to update you regarding the TLC conservation easement on your property.

> • The TLC board has approved adjusting the farming envelope from 10 acres to 15 acres in return for you extinguishing the remaining two severable parcels on site and being allowed to keep the unpaved road.
>
> • TLC has consulted with our attorney and they are recommending that we do an amendment and restatement of the easement. This will bring the conservation easement up to current standards and communicate the terms more clearly for everyone involved moving forward. All landowners involved in the property will need to agree and sign the updated easement.
>
> • The next step in the process will be you hiring a surveyor to map out and mark the updated envelope boundaries. We ask that someone from TLC be present on site for this.
>
> • Once these steps are completed the site will need an appraisal. This must be done before the updated easement can be closed.

[4] This is relevant to the current motion because there has already been a ruling in this case that all Conservation Property owners are required to be parties to make binding decisions related to the Conservation Easement and its terms. Three of the five Conservation Property owners are not parties to the Counterclaim asking the Court to order the amendment of multiple Conservation Easement terms.

> As stated in the TLC amendment policy that Bo sent you a while back, the costs of this process are on the landowner to cover. This includes the attorney fees for TLC, survey, appraisal, and TLC staff time.
>
> I am attaching a rough visualization of the updated envelope boundaries for your review.
>
> Let us know if you have any questions about any of this."

The electronic signature at the end is "Triangle Land Conservancy Hannah Royal Stewardship Manager." CC, Exhibit B.

2. The Action of the TLC Board of Directors.

The Counterclaims and the Royal Email attached thereto as Exhibit B both reference action by the TLC Board of Directors that allegedly authorized the alleged contract to amend the Conservation Easement. *See* CC, ¶¶ 42-43. The minutes from that meeting are available and have been produced to UGF in discovery. As explained in the Legal Argument Section *infra*, this allows the actual Minutes to be considered by the Court in deciding TLC's Rule 12(b)(6) motion. A copy is attached to this Brief as Attachment B.

The meeting at which the alleged agreement was discussed by the TLC Board of Directors was on March 7, 2024. The following is the relevant excerpt from the minutes of that meeting:

> **"2. Resolve easement violation issues with Union Grove Farm**
>
> Sandy [Sweitzer] and Bo [Howes] explained current situation at Union Grove Farm and letter from neighbors, gave background and shared TLC's current proposal.
>
> Board and staff discussed the conservation options, and a potential meeting with neighbors, in response to questions from public.
>
> **Marlena Byrne motioned to approve staff negotiating an agreement as described with the landowner, provided it will come back to the board if there are any substantial changes; final agreement will have to be approved by the board. Jackie Pierce seconds; All in Favor, no opposed. Motion carries."**

c. The Allegations in The Counterclaims.

The Counterclaims allegations include the following:

UGF is a North Carolina Corporation that manages a farming operation in Orange County. CC, ¶ 1.[5] The Counterclaim Defendants allege Bandit Farms II and Bandit Farms III own property in Orange County, but do not identify the location. CC, ¶¶ 2-3. In their Answer, however, the Counterclaim Defendants admit that all Defendants, *except UGF,* are the record owners of the Conservation Property. Answer, ¶¶ 14-18. The Conservation Easement is attached to the Counterclaims as Exhibit A. The current fee simple owners purchased the Conservation Property in 2022, and UGF leases it from the owners. CC, ¶¶ 24-25.

The Conservation Easement restricts the construction of buildings and other structures outside of the Farm Envelope area, which is illustrated at Exhibit B to the Conservation Easement. CC, ¶¶ 16-17. Mr. Bohlen approached TLC and asked to expand the Farm Envelope so UGF could construct more buildings and structures on the Conservation Property. CC, ¶ 37.[6] Four members of TLC's staff allegedly visited the Conservation Property on February 15, 2024 and were shown the boundaries of where UGF wanted to expand the Farm Envelope. CC, ¶¶ 38-40. TLC Stewardship Coordinator Hannah Royal "took coordinates" of the boundaries of the existing and proposed expansion of the Farm Envelope. CC, ¶ 41.

Ms. Royal "notified UGF" by the Royal Email that TLC had agreed to expand the Farm Envelope from 10 to 15 acres in return for extinguishing UGF's rights "to construct two single family homes within the Conservation Easement." CC, ¶ 42.[7]

---

[5] The Counterclaim Defendants do not claim UGF is a Conservation Easement property owner, nor a party to the Conservation Easement.

[6] As TLC later discovered, the expansion was intended to accommodate the 2500-seat amphitheater that was determined approximately a year later to be in violation of the UDO. *See* Cmplt, ¶ 54, Ex. J.

[7] Paragraph 42 cites the Conservation Easement as authority, but that document does not give UGF a right to amend the terms.

The Counterclaim's First Claim for Relief is for "Breach of Contract and Specific Performance." It claims that UGF "requested" that TLC expand the Farm Envelope in exchange for UGF relinquishing the right to build single family homes "on *its* property subject to the Conservation Easement." CC, ¶ 89.[8] Then, TLC allegedly accepted the "request" by the Royal Email. CC, ¶¶ 89-92. The Counterclaim's second claim for relief alleges, as a result of TLC's alleged breach of contract, UGF has suffered money damages. CC, ¶¶ 92, 97-98.

IV. LEGAL ARGUMENT.

A. The Rule 12(b)(6) Standard.

A claim should be dismissed under N.C. R. Civ. P. 12(b)(6) for failure to state a claim when: "(1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim." *Wilson v. SunTrust Bank*, 257 N.C. App. 237, 244, 809 S.E.2d 286, 292 (2017) (quoting *Freedman v. Payne*, 246 N.C. App. 419, 422, 784 S.E.2d 644, 647 (2016)).

"When ruling on a Rule 12(b)(6) motion, a court may properly consider documents which are the subject of a plaintiff's complaint and to which the complaint specifically refers even though they are presented by the defendant." *Holton v. Holton*, 258 N.C. App. 408, 419, 813 S.E.2d 649, 657 (2018). "A document attached to and incorporated within a complaint is not considered a matter outside of the pleading." *Id.* at 418, 813 S.E.2d at 657. *See also Woolard v. Davenport*, 166 N.C. App. 129, 133-34, 601 S.E.2d 319, 322 (2004) (documents that are attached to the complaint as exhibits and referenced therein will be considered by the Court for Rule 12(b)(6) purposes). The

[8] UGF, of course has no right to extinguish any Conservation Easement rights, nor to expand the Farm Envelope, without the written consent of all the other Defendant fee simple owners.

Court may also consider records of which it can take judicial notice. *Wood v. J.P. Stevens & Co.*, 297 N.C. 636, 641, 256 S.E.2d 692, 696 (1979) ("[I]t is clear that judicial notice can be used in rulings on ... motions to dismiss for failure to state a claim."). This includes public records, *i.e.*, documents created by a county in connection with the transaction of its business. *Anderson Creek Partners, L.P. v. Cnty. of Harnett*, 275 N.C. App. 423, 854 S.E.2d 1 (2020), *rev'd on other grounds*, 382 N.C. 1, 876 S.E.2d 476 (2022).

B. <u>The Breach of Contract Counterclaims Must be Dismissed Because They Allege Only an Agreement Between UGF and TLC Which Prevents the Formation of A Valid Agreement to Amend the Conservation Easement Because UGF is Not a Party to the Conservation Easement Nor a Conservation Property Fee Simple Owner</u>.

The Conservation Easement was an agreement between the original Grantor (the Nutters), the "sole owner[s] in fee simple," and the Grantee, TLC, a "qualified conservation organization." CC, Ex. A, pp. 1, 3. Section 16 of the Conservation Easement allowed the Grantor to transfer the Conservation Property "to any third party." Once this was done, the Grantor[s] became the current fee simple Conservation Property owners, *i.e.,* Bandit Farms II, LLC, Bandit Farms III, LLC, EastWest Organics, LLC, Harper Grace, LLC, and Meredith G. Saybe. UGF is not a Grantor under the terms of the Conservation Easement.

Section 17 of the Conservation Easement is entitled "Amendment of Easement," and specifically provides that "[t]his easement may only be amended with the written consent of the Grantor and Grantee." The Counterclaims allege that Greg Bohlen "on behalf of UGF" approached TLC and asked to expand the Farm Envelope so it could construct more buildings on the Conservation Property. This promise was in exchange for "UGF's extinguishment of existing severable parcels on its property subject to the Conservation Easement." CC, ¶ 89. The

Counterclaims allege only a contract between UGF and TLC. The Counterclaims do not claim any of the required Grantors are part of the agreement.

The Counterclaims allege that only UGF is ready to perform its contractual obligations and "sign an amendment to the Conservation Easement" to expand the Farm Envelope and extinguish its right to build single family homes on the Conservation Easement Property. CC, ¶ 95. This is, however, legally impossible for UGF for multiple reasons.

First, by its express terms, the Conservation Easement requires that all Grantors, which are the five Defendants *other than UGF,* to agree in writing to amend the Conservation Easement's terms. They have not done so. UGF is not a fee simple Conservation Property owner, and is likewise not a Grantor or even a party to the Conservation Easement. Therefore, under the plain terms of the Conservation Easement, Mr. Bohlen and UGF lacked both the authority to enter into the alleged contract, and the power to perform it.

Second, the Counterclaims allege that the only party to the alleged contract was a non-Grantor, non-party and in fact, there are no allegations that any of the required Grantors agreed to any of the terms. In fact, three of them, EastWest Organics, Harper Grace, and Meredith Saybe are not even parties to the Counterclaims. The allegations of the Counterclaims, thus, prove there was no valid agreement.

C. The Breach of Contract Counterclaims Must be Dismissed Because the TLC Board Minutes and the Royal Email Establish as a Matter of Law that No Contract Existed because at Best, the Parties had an Agreement to Agree, and that There was No Meeting of the Minds Sufficient to Prove the Existence of a Valid Contract.

1. The TLC Board Minutes Establish There Was No Contract.

It is a well-settled principle of contract law that a valid contract exists only where there has been a meeting of the minds as to all essential terms of the agreement. *O'Grady v. First Union*

Nat. Bank, 296 N.C. 212, 221, 250 S.E.2d 587, 594 (1978). To constitute a valid contract, the parties "must assent to the same thing in the same sense, and their minds must meet as to all the terms. If any portion of the proposed terms is not settled, or no mode agreed on by which they may be settled, there is no agreement." *Boyce v. McMahan*, 285 N.C. 730, 734, 208 S.E.2d 692, 695 (1974) (citation omitted).

"[I]f it appears that the parties are merely negotiating to see if they can agree upon terms, and that the writing is to be the contract, then there is no contract until the writing is executed." There must be a meeting of the minds as to all "essential" or "material" terms, and if there is not, there is no agreement. *Creech v. Melnik*, 347 N.C. 520, 527, 495 S.E.2d 907, 911-12 (1998).

The Counterclaim Defendants allege the Royal Email constituted a writing sufficient to memorialize an oral agreement to convey an interest in land. That contention erroneously assumes that the TLC Board did in fact vote to approve such an agreement and that the Royal Email accurately conveys the same. However, the Minutes from the TLC Board show the exact opposite – which is the underlying action upon which the Counterclaim Defendants allege supports their counterclaims. The precise motion by the TLC Board authorizing Ms. Royal to attempt to "[r]esolve easement violations with TLC" was as follows:

> Marlena Byrne motioned to approve ***staff negotiating an agreement*** as described with landowner, provided it will come back to the board if there are any substantial changes; ***final agreement will have to be approved by the board.*** Jackie Pierce seconds; All in Favor, no opposed. Motion carries.

(emphasis added)

TLC is the Conservation Easement Grantee and must agree in writing to amend the terms of the Conservation Easement. The TLC Board of Directors only authorized Ms. Royal to *negotiate* an agreement that would have to come back to the TLC Board for final approval. The

final terms had not been decided, much less approved by the TLC Board. The TLC Board action established as a matter of law that the terms "were not settled" and no contract was formed.

2. The Royal Email Establishes There Was No Contract as a Matter of Law.

Even assuming *arguendo* that the Royal Email, as opposed to the actual action of the TLC Board, could be construed as the operative writing, the breach of contract Counterclaims still fail.

A writing contemplating a future agreement for signature is at best an agreement to agree, not an enforceable contract. *Garland v. Orange Cnty.*, 293 N.C. App. 232, 239, 900 S.E.2d 689, 695 (2024), *writ denied, review denied*, 908 S.E.2d 826 (N.C. 2024)). *See also Tapp MFG, Inc. v. Speed UTV*, LLC, No. 1:24-CV-944, 2026 WL 207480 at *7 (M.D.N.C. Jan. 27, 2026) (holding that an email expressly contemplating a future agreement for signature was not an enforceable contract).

Garland v. Orange County is directly on point. The *Garland* court held that an email "to memorialize the terms of the parties' settlement agreement . . ." and featuring trial counsel's name below the body of the mail, was insufficient to support the formation of a contract. *Garland*, 293 N.C. App. at 239, 900 S.E.2d at 694-695. The Court reasoned that a document setting out the terms of an agreement, but which planned to execute a more detailed agreement at a later date was not an enforceable contract and was, at best, an agreement to agree. *Id.*

The *Garland* Court also expressly held that because trial counsel stated that a future draft would be sent for signature, writing his name at the bottom of the email was *not* an enforceable electronic signature. *Id.* The reference to a future signature undermined the contention that the email sign-off was intended to be an execution of the agreement. *Id.* Rather, the Court noted that this was merely "a common practice in email correspondence." *Id.*

The facts in the present case are virtually identical to those in *Garland* because the Royal Email is clear that a final draft will need to be prepared, agreed upon and signed in the future. The Royal Email states that an amendment and restatement of the Conservation Easement will be required to not only enlarge the farm envelope and extinguish rights on the severable parcels, but there must be additional new terms as well. Specifically, these new terms will be required to "bring the conservation easement up to current standards and communicate the terms more clearly for everyone moving forward. ***All landowners involved in the property will need to agree and sign the updated easement."*** (emphasis added). Thus, there are terms still to be negotiated and more importantly, the Royal Email clearly states the agreement and signatures of multiple owners other than UGF are required for the agreement to be final. Pursuant to *Garland*, the provision that a future agreement would be sent for signature prevents Ms. Royal's name at the bottom of her email from serving as the execution of a valid contract.

The Conservation Easement also requires all Grantors and the Grantee to agree to any amendment in writing. Ms. Royal could not extinguish that requirement by an email. Also, UGF is presumably in possession of the Conservation Easement and is aware of its terms, so could not have reasonably believed it could unilaterally amend that document without the written consent of all of the Conservation Property owners. In fact, there are no allegations in the Counterclaims that all the other unnamed Conservation Property owners are even aware of the alleged agreement struck by the lessee UGF, much less that they have agreed to it.

In sum, the Royal Email by its own terms is at best an agreement to agree and establishes there has not been a meeting of the minds as a matter of law. This requires that the Counterclaims alleging breach of contract by UGF must be dismissed.

D. <u>The Royal Email Fails to Satisfy the Statute of Frauds</u>.

Even assuming *arguendo* that there was a verbal agreement, the Royal Email does not include the terms required by the statute of frauds to memorialize that agreement. A contract dealing with an interest in real property, including an easement, is subject to the statute of frauds. N.C. Gen. Stat. § 22-2. Additionally, an agreement to expand or modify an easement is subject to the statute of frauds and therefore requires a signed writing. *See Singleton v. Haywood Elec. Membership Corp.*, 151 N.C. App. 197, 202-03, 565 S.E.2d 234, 238 (2002), *aff'd*, 357 N.C. 623, 588 S.E.2d 871 (2003) (holding that an easement must be in writing pursuant to the statute of frauds and must be sufficiently certain to permit the identification and location of the easement with reasonable certainty); *Concrete Mach. Co. v. City of Hickory*, 134 N.C. App. 91, 95, 517 S.E.2d 155, 157 (1999) (holding that an oral modification of an easement was unenforceable due to the statute of frauds). "The burden of proving that a sufficient writing exists memorializing the conveyance of the easement is on the party claiming its existence." *Id.* at 95, 517 S.E.2d at 157.

A threshold statute of frauds requirement is that the writing must be "signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized." *See* N.C. Gen. Stat. § 22-2.

In addition, the writing must contain certain required terms including: 1) a description of the property buyer and the seller (here the Grantors and Grantee); 2) the purchase price, or other consideration; 3) a description of the property to be conveyed; and 4) the contract's subject matter "either certain in itself or capable of being reduced to certainty by reference to something extrinsic to which the contract refers." *Hurdle v. White*, 34 N.C. App. 644, 648, 239 S.E.2d 589, 592 (1977); *see also* Webster's Real Estate in North Carolina, Section 9.07.

1. Ms. Royal Was Not "Lawfully Authorized" to Bind TLC and the Counterclaim Defendants Could Not Have Reasonably Believed Otherwise.

Pursuant to N.C. Gen. Stat. § 22-2, the Royal Email could only satisfy the statute of frauds and create a binding agreement on behalf of TLC if Ms. Royal was "lawfully authorized" by the TLC Board of Directors to do so. The Counterclaims do not allege Ms. Royal had this authority, and the facts are clear that she did not because the TLC Board minutes plainly state she was only given permission to *negotiate* terms, which were then required to be brought back for final TLC Board approval. That alone should put an end to the breach of contract counterclaims.

In addition, Ms. Royal signed the email as the TLC "Stewardship Manager" and did not hold herself out as having authority to act on behalf of the TLC Board to execute the contract. This is made clear by Ms. Royal's statements regarding the additional steps that must take place before the agreement can be finalized, including the agreement and signature of all Conservation Property owners who are not on the email.

Finally, while electronic signatures can at times operate to satisfy the statute of frauds, that is only the case when the parties intend to conduct transactions via electronic means. The North Carolina Supreme Court has held that if a party intends for a physical signature to be affixed, and it is not, there is no signature. *Powell v. City of Newton*, 364 N.C. 562, 567, 703 S.E.2d 723, 727-28 (2010). Furthermore, "[w]here an offeror's manifest intent is for a formal execution of a document to constitute acceptance, the contract is not valid until the offeree complies by signing the document." *603 Glenwood, Inc. v. 616 Glenwood, LLC*, 293 N.C. App. 360, 367 (2024), *review denied*, 908 S.E.2d 827 (N.C. 2024).

The language of the Royal Email indicates that the manifest intent of TLC was to obtain formal signatures to effectuate amendments to the Conservation Easement. The language of the Royal Email expressly recognizes, and the Conservation Easement itself provides, that the

easement terms cannot be changed unless TLC and all Grantors sign a restated and amended Easement. A TLC employee giving a "Conservation Easement Update[]" cannot modify these required procedures.

2. The Royal Email Does Not Identify or Include All "Grantors" Who Are Required to Agree to Any Amendment of the Conservation Easement.

The Royal Email is addressed to Greg Bohlen and Meredith Sabye only. While the email states that all of the Conservation Easement Owners must sign, they are not specifically identified and more importantly were not recipients of the email. According to the Counterclaims, they were likewise not parties to the verbal agreement to amend the Conservation Easement; that was brokered only by Mr. Bohlen and UGF. The Royal Email cannot constitute a contract when all of the necessary and required parties were not included or copied and there is no evidence they were all even aware the email existed.

3. The Royal Email Does Not Sufficiently Identify the Property.

The Royal Email states that "the TLC board has approved adjusting the farming envelope from 10 acres to 15 acres," and that "[t]he next step in the process will be you hiring a surveyor to map out and mark the updated envelope boundaries." While Ms. Royal also states she has attached "a rough visualization of the updated envelope boundaries," the location on the ground has not been finalized.

The North Carolina Supreme Court recently held "that courts impose heightened particularity requirements to property descriptions in real estate contracts." *Smith Debnam Narron Drake Saintsing & Myers, LLP v. Muntjan*, 389 N.C. 70, 76, 927 S.E.2d 1, 6 (2026). Phrases such as "the farm on which *I* now live," or "*her* house and lot north of Kinston" are sufficient descriptions whereas phrases like "*a* tract of land lying on the North Side of Watery Branch. . ." are not. *Id.* at 77-78, 927 S.E.2d at 7 (emphasis supplied) (citations omitted). This is because such

phrases provide sufficient specificity to avoid conflicts over what land is being conveyed—the goal of the heightened particularity requirement.

The language in the email and the attached map fail to meet this heightened particularity standard because the boundaries could be susceptible to more than one meaning. The email itself references the map as a "rough visualization" and emphasizes the need for a survey to mark precise boundaries. As the *Smith Debnam* Court notes, "[t]he ambiguous [land] descriptions of the past are the boundary disputes of the future." *Id.* at 77, 927 S.E.2d at 6 (citation omitted). The Royal Email and "rough visualization" do not provide sufficient particularity to satisfy the statute of frauds.

V. CONCLUSION.

Based on the foregoing, TLC respectfully requests that the Court grant its N.C.R. Civ. P. 12(b)(6) Motion and dismiss all of the Counterclaims of the Counterclaim Defendants.

This, the 11th day of June 2026.

SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN, LLP

By: */s/ Robin L. Tatum*
Robin L. Tatum
N.C. State Bar No. 17624
rtatum@smithlaw.com
By: */s/ Catherine H. Hill*
Catherine H. Hill
N.C. State Bar No. 46118
chill@smithlaw.com
P.O. Box 2611
Raleigh, North Carolina 27602-2611
Telephone: (919) 821-1220

Attorneys for Triangle Land Conservancy

CERTIFICATE OF SERVICE

This is to certify that the undersigned electronically filed the attached ***Plaintiff's Memorandum of Law in Support of Motion to Dismiss*** with the Clerk of Court using the Odyssey eFileNC system which will automatically send email notification of such filing to the following:

Samuel A. Slater
Mary Kate Gladstone
Wyrick Robbins Yates & Ponton LLP
4101 Lake Boone Trail, Suite 300
Raleigh, NC 27607
sslater@wyrick.com
MGladstone@wyrick.com
Attorneys for Union Grove Farm, Inc., Bandit Farms II, LLC, Bandit Farms III, LLC and Harper Grace, LLC

Paul M. Dubbeling
P.M. Dubbeling, PLLC
210 North Columbia Street
Chapel Hill, NC 27514
Paul@pmdubbeling.com
Attorney for Defendant Meredith Sabye

Anna Farmer
Dogwood Legal, Inc.
118 E. Main Street, Rm. 206
Carrboro, NC 27510
farmer@annshylaw.com
Attorney for Defendant EastWest Organics, LLC

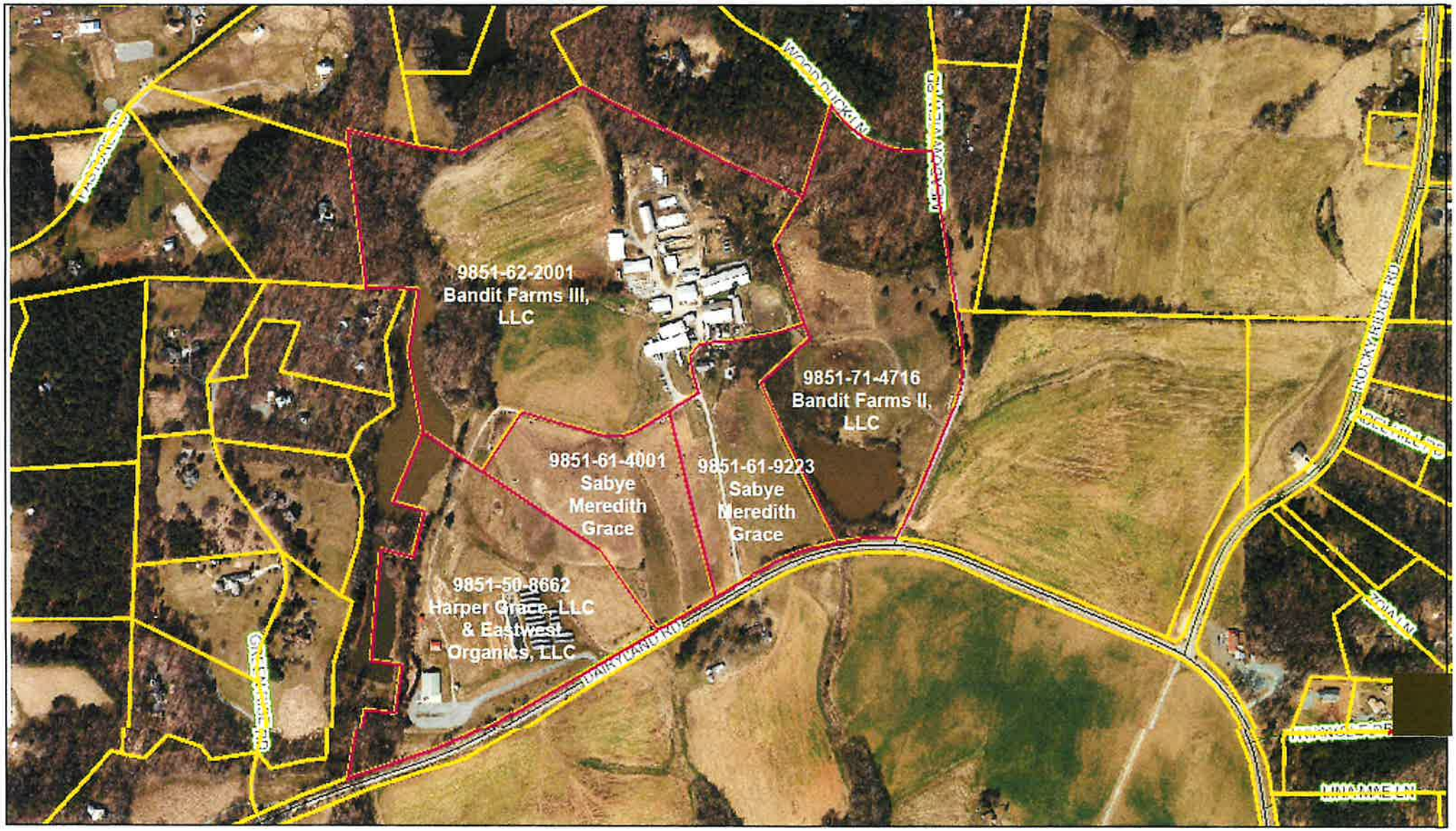
This, the 11th day of June 2026.

SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN, LLP

By: */s/ Robin L. Tatum*
Robin L. Tatum
N.C. State Bar No. 17624
rtatum@smithlaw.com
By: */s/ Catherine H. Hill*
Catherine H. Hill
N.C. State Bar No. 46118
chill@smithlaw.com
P.O. Box 2611
Raleigh, North Carolina 27602-2611
Telephone: (919) 821-1220
Attorneys for Triangle Land Conservancy

Attachment A

TLC - Parcels in Conservation Easement



Attachment B

TLC Special Board Meeting
Zoom
March 7, 2024

TLC Board Present: Connor Jarvis, Tandy Jones, Jack Blackmer, Jackie Pierce, Nicki Cagle, Marlena Byrne, Jenny Bo, Sean Wilson, Cindy Pacchiana, Lysandra Weber, Anupama Joshi, JaLisha Richmond, Jimmy Randolph, Bert Fisher, Patrick Mateer

TLC Staff: Sandy Sweitzer, Bo Howes, Christine Wilson, Matt Rutledge, Hannah Royal, Leigh Ann Hammerbacher

1. **Introductions, Conflict of Interest**
   This meeting will be conducted in conformance with TLC's approved conflict of interest policy. All board and staff members and non-board members are required to disclose any potential, actual or perceived conflicts of interest involving themselves, close relatives, or related entities. The minutes will show that the person disclosing a conflict of interest absented themselves from discussions on the matter and abstained from voting on any such issue.

2. **Resolve easement violation issues with Union Grove Farm**

Sandy and Bo explained current situation at Union Grove Farm and letter from neighbors, gave background and shared TLC's current proposal.

Board and staff discussed the conservation options, a potential meeting with neighbors, in response to questions from public.

Marlena Byrne motioned to approve staff negotiating an agreement as described with landowner, provided it will come back to the board if there are any substantial changes; final agreement will have to be approved by the board. Jackie Pierce seconds; All in Favor, no opposed. Motion carries

3. **Blaine project. Details in packet**

Leigh Ann presented the project.
Jimmy Randolph motioned to approve TLC acquisition as outlined; Bert Fisher seconded; Passed unanimously. (Jenny Bo voted to approve by email having left early.)

Meeting adjourns.