No. 23-12737

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

YIFAN SHEN, et al.,

Plaintiffs–Appellants,

v.

WILTON SIMPSON, in his official capacity as Florida Commissioner of Agriculture, et al.,

Defendants–Appellees.

On Appeal from the United States District Court
for the Northern District of Florida, No. 4:23-cv-208 (Winsor, A.)

PLAINTIFFS–APPELLANTS' TIME-SENSITIVE MOTION FOR INJUNCTION PENDING APPEAL AND MOTION FOR EXPEDITED APPEAL

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-3, Plaintiffs–Appellants certify that the following individuals and entities may have an interest in the outcome of this case or appeal:

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Plaintiffs–Appellants further state that no publicly traded company or corporation has an interest in the outcome of the case or appeal. Plaintiffs–Appellants certify that Multi-Choice Realty, LLC has no parent corporation, and no

publicly held corporation owns 10% or more of its stock. The remaining Plaintiffs–Appellants are individual persons.

Dated: August 25, 2023

/s/ Ashley Gorski
Ashley Gorski
American Civil Liberties Union Foundation

Attorney for Plaintiffs–Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Other Sources

TIME-SENSITIVE
MOTION FOR INJUNCTION PENDING APPEAL
AND FOR EXPEDITED APPEAL

Plaintiffs-Appellants move for an injunction pending appeal pursuant to Federal Rule of Appellate Procedure 8 to halt the implementation of portions of Florida Senate Bill 264, codified at Florida Statutes §§ 692.201, 692.203-204 ("SB 264"). The statute restricts the ability of people whose "domicile" is in China to purchase real property in the state. Plaintiffs seek to enjoin the following sections of the statute: in Section 692.204(1)(a), only the provisions applying to individuals "domiciled" in China under subsections (1)(a)(4), (1)(a)(5); in Section 692.201(4), only the provisions applying to individuals "domiciled" in China under subsections (4)(d), (4)(e); and Sections 692.203-204 insofar as they apply to residential real estate. Based on the ongoing harms described below, Plaintiffs also move for an order expediting the appeal pursuant to I.O.P. 3 of Eleventh Circuit Rule 27-1.[1]

[1] Defendants in this matter include both state officers sued in their official capacity and state attorney defendants. On July 5, 2023, the district court granted a joint motion of Plaintiffs and the state attorney defendants to stay proceedings as to those particular defendants. *Shen v. Simpson*, No. 4:23-cv-00208-AW, ECF No. 59. The state officer defendants (hereinafter, "the State" or "Defendants-Appellees") opposed Plaintiffs' motion for a preliminary injunction and oppose Plaintiffs' motion for an injunction pending appeal.

INTRODUCTION

A new Florida law, SB 264, forbids people who are "domiciled" in China from purchasing homes in the state, with only extremely narrow exceptions. It is currently wreaking havoc on the lives and plans of Plaintiffs and thousands of others across Florida—as well as roiling the real estate market. Plaintiff Zhiming Xu is scheduled to close on a home *next month* and, absent relief, will be forced to cancel his contract for a unique, irreplaceable property. Plaintiff Multi-Choice Realty, a brokerage, is already losing customers. SB 264 also requires all purchasers to attest under penalty of perjury that they are not domiciled in China or otherwise comply with the law's vague terms—deterring lawful purchases and casting suspicion over any prospective purchaser of Asian descent. Because of SB 264, some lenders are now refusing to deal with *any* Chinese national. In addition to these harms, the statute perpetuates odious stereotypes by treating Chinese people as mere instruments of the Chinese government. Meanwhile, the State has no justification for restricting purchases of homes by Plaintiffs or others who live in Florida. The balance of the equities weighs decisively in Plaintiffs' favor, particularly given the limited nature of the injunction that Plaintiffs seek.

The district court erroneously held that Plaintiffs are unlikely to prevail on the merits. But SB 264 mandates egregious national-origin discrimination, in violation of the Fair Housing Act and Equal Protection Clause. *See* U.S. Statement of Interest,

App.231-53. The statute's use of "domicile" is simply a fig leaf for national origin; indeed, 99.9% of the people "domiciled" in China are of Chinese national origin. Yet the district court concluded that SB 264 is *neutral* as to national origin, ignoring common sense and longstanding precedent.

Despite deeming Plaintiffs' preemption claim "closer" than the others, the district court nevertheless wrongly rejected it. Not only does Florida's law squarely conflict with the federal regime governing national-security review of real estate transactions, but it interferes with the federal foreign-affairs power in precisely the way this Court has warned against. SB 264 has "select[ed] by name a foreign country on which it ha[s] declared, in effect, some kind of economic war." *Odebrecht Const., Inc. v. Sec'y, Fla. Dep't of Transp.*, 715 F.3d 1268, 1287 (11th Cir. 2013).

To preserve the pre-SB 264 status quo, and to prevent irreparable harms, this Court should enjoin the challenged provisions pending appeal.

STATEMENT OF FACTS

Plaintiffs, four individuals of Chinese descent and a real estate business, live, study, and work in Florida. *See* App.103, 122, 147, 153, 159. The individual plaintiffs are not citizens or permanent residents of the United States but have actively contributed to the State and its economy for years. *See* App.103, 122, 147, 153.

SB 264 took effect on July 1, 2023. The law creates two separate sets of restrictions on land ownership in Florida. The first set of restrictions bars people from seven "foreign countries of concern," including China, from owning or acquiring real property within ten miles of a military installation or a critical infrastructure facility. Fla. Stat. § 692.203.

Most relevant here is the second set of prohibitions, which targets Chinese people for even more sweeping restrictions and severe penalties. The statute bars "[a]ny person who is domiciled in the People's Republic of China and who is not a citizen or lawful permanent resident of the United States" from purchasing or owning *any* real property in the state. Fla. Stat. § 692.204(1)(a)(4). The sole exception is that people with a valid non-tourist visa or who have been granted asylum are permitted to purchase one residential real property—but only if the property is less than two acres and not within five miles of a military installation. *Id.* § 692.204(2). The law also requires people domiciled in China to register their existing property with the State, with civil penalty and forfeiture consequences for failure to comply. *Id.* § 692.204(4).

Chinese purchasers and those who sell to Chinese persons in violation of the statute are subject to significant criminal penalties. *Id.* § 692.204(8)-(9). Notably, these penalties are more severe than those applicable to people from other "countries

of concern" who violate the law. *Id.* § 692.203(8)-(9). For purchasers, the law's criminal penalties have no mens rea requirement. *Id.* §§ 692.204(8) .203(8).

SB 264 is already causing and will continue to cause Plaintiffs irreparable harm, including by forcing Plaintiffs Xu and Yifan Shen to cancel pending purchases of new homes. App.104-05, 123-24. Plaintiff Xu is scheduled to close on a home next month, and Plaintiff Shen is scheduled to close in December 2023. *Id.* Other irreparable harms include Plaintiff Multi-Choice Realty's loss of significant business; the discriminatory requirement that Plaintiffs register their existing properties with the State under threat of penalties; and anti-Asian discrimination and stigmatization resulting from the law. App.80, 106, 123, 148, 154, 161, 220-21.

The district court denied a preliminary injunction on August 17, App.1-52, and denied an injunction pending appeal on August 23, App.53-55.

ARGUMENT

I. Plaintiffs are likely to succeed on the merits.

An injunction pending appeal requires consideration of whether (1) the movant is likely to prevail on the merits; (2) irreparable harm to the movant; (3) any harm to opposing parties; and (4) the public interest. *Fla. Businessmen for Free Enter. v. City of Hollywood*, 648 F.2d 956, 957 (5th Cir. 1981). Where, as here, the balance of the equities weighs heavily in favor of an injunction, the movant need only show a "substantial case on the merits," rather than a probability of success on

the merits. *League of Women Voters of Fla., Inc. v. Fla. Sec'y of State*, 32 F.4th 1363, 1370 (11th Cir. 2022).

A. SB 264 violates the Fair Housing Act.

The Fair Housing Act ("FHA") prohibits housing practices that discriminate based on national origin and race, 42 U.S.C. §§ 3604, 3605, and state laws that "require or permit" any discriminatory housing practice, *id.* § 3615; *see Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 539 (2015) (FHA's "central purpose" is to "eradicate discriminatory policies" in housing). As Plaintiffs and the United States explained below, SB 264 blatantly violates the FHA in several respects. *See* U.S. Statement of Interest, App.231-46.

First, SB 264 violates the FHA because it facially discriminates based on national origin by barring Chinese people from home purchases. The district court held that SB 264 does not discriminate based on national origin because it applies based on Chinese "domicile." App.19. But for the FHA analysis, the use of "domicile" is essentially indistinguishable from national origin. The vast majority of individuals domiciled in a country were typically born there—and that is certainly true of China. Yet the district court refused to accept this straightforward proposition. *Id.* Even if statistics were required at this stage, it is not reasonably disputable that China's population is overwhelmingly of Chinese origin—99.9%,

according to the United Nations.[2] Thus, with respect to China, SB 264 "is effectively a birthplace classification." *Id*.

The district court's analysis is also contrary to case law forbidding the use of fig leaves to discriminate against protected classes. In cases involving the FHA and similar statutes, courts have long recognized the impermissibility of discrimination based on "proxies." *See, e.g.*, *Pac. Shores Props., LLC v. City of Newport Beach*, 730 F.3d 1142, 1160 n.23 (9th Cir. 2013) ("Proxy discrimination is a form of facial discrimination."); *Children's All. v. City of Bellevue*, 950 F. Supp. 1491, 1496 (W.D. Wash. 1997). Were it otherwise, anti-discrimination laws could easily be evaded by creative drafting. Here, "domicile" is no more than camouflage for regulating Chinese people—and notably, the State has advanced no rationale for the law's peculiar use of "domicile" as a trigger for its prohibitions.

The district court further erred by reasoning that "domicile" could only be a proxy if it is "practically indistinguishable" from national origin. App.19. As explained above, the two categories *are* practically indistinguishable—but regardless, that is not the relevant legal test. The Supreme Court has never required

[2] United Nations Statistics Division, UNData, China, Social Indicators Concerning "International migrant stock," https://data.un.org/en/iso/cn.html; *see Dimanche v. Brown*, 783 F.3d 1204, 1213 n.1 (11th Cir. 2015) ("Absent some reason for mistrust, courts have not hesitated to take judicial notice of agency records and reports." (citation omitted)).

proxies to be "practically indistinguishable" from a protected characteristic. *See Rice v. Cayetano*, 528 U.S. 495, 514, 516-17 (2000) (holding "ancestry" requirement an impermissible proxy for "race," even though the two categories were not coextensive); *Resendiz v. Exxon Mobil Corp.*, 72 F.4th 623, 628 (4th Cir. 2023) (requiring mere "overlap"). In this analysis, it does not matter that some people of Chinese origin are not domiciled in China. *Rice v. Cayetano*, 528 U.S. at 516-17. Likewise, it does not matter that an exceedingly small number of people domiciled in China are not of Chinese origin; that will frequently be true of proxies. *See, e.g.*, *Guinn v. United States*, 238 U.S. 347, 364-65 (1915) (striking "grandfather clause" in which ancestry functioned as an proxy for race, even though some African Americans' ancestors were eligible to vote in various northern states, as explained in *Davis v. Guam*, 932 F.3d 822, 842 (9th Cir. 2019)); *Horizon House Developmental Servs., Inc. v. Twp. of Upper Southampton*, 804 F. Supp. 683, 694 (E.D. Pa. 1992), *aff'd*, 995 F.2d 217 (3d Cir. 1993). Just as discrimination based on grey hair is a proxy for age, despite the occasional grey youth, here the rare exception proves the rule. *McWright v. Alexander*, 982 F.2d 222, 228 (7th Cir. 1992).

Without this Court's intervention, the district court's analysis risks eviscerating the FHA's protections. It would allow state and local governments—and any property owner—to freely discriminate based on national origin, simply by

labeling it "domicile"-based discrimination. Because SB 264 discriminates on its face, using the thinnest proxy for national origin, it violates the FHA.[3]

Second, SB 264 also violates the FHA because federal law prohibits housing practices that *intentionally* discriminate based on protected characteristics. *See, e.g.*, *Jackson v. Okaloosa Cnty.*, 21 F.3d 1531, 1542 (11th Cir. 1994); *Sec'y, U.S. Dep't of Hous. & Urb. Dev. v. Blackwell*, 908 F.2d 864, 871 (11th Cir. 1990). Regardless of whether the Court analyzes the proxy issue under the rubric of facial or intentional discrimination, the answer is the same: SB 264 discriminates on the basis of national origin.

Plaintiffs have established discriminatory intent through direct and circumstantial evidence. *First*, it was doubtless known and foreseeable to Florida legislators and Governor DeSantis that Section 692.204 of this statute would overwhelmingly, if not exclusively, bar people who are Chinese, and who are Asian, from purchasing homes.

Second, legislators and the governor understood that the statute reached far beyond the Chinese government and its agents, *see, e.g.*, App.196 (staff bill analysis

[3] Although some circuits have held that facial discrimination based on disability may be permitted under the FHA in narrow circumstances, *see, e.g.*, *Larkin v. State of Mich. Dep't of Soc. Servs.*, 89 F.3d 285, 290 (6th Cir. 1996), those circumstances are not applicable here, and Plaintiffs are aware of no FHA case permitting facial discrimination based on national origin.

explaining that prohibitions apply to "persons domiciled in China"), yet they never offered a justification for casting such a wide net. Rather, their stated justification has focused entirely on the Chinese *government*. *See, e.g.,* App.192 (Governor DeSantis stating that the bill seeks to "follow[] through on our commitment to crack down on Communist China"). Indeed, following the district court's ruling, Governor DeSantis tweeted that the Department of Justice "sided with Communist China against Florida's law prohibiting CCP-tied entities from buying land in Florida,"[4] even though Plaintiffs reside in Florida and are neither members of the Chinese government nor members of the CCP. Governor DeSantis and the statute itself have relied on pernicious stereotypes to wrongfully conflate people merely domiciled in China with their government—treating Chinese people as inherently suspicious and as mere instruments of the CCP.

Third, narrower alternatives were available to the state. Although the district court claimed that Plaintiffs cited no such alternatives, App.32, that is incorrect. *See* Pls. Reply 9, ECF No. 65 (explaining that the legislature "easily could have limited the law to foreign powers and their agents"). State officials specifically chose instead to sweep in countless ordinary Chinese people. *See, e.g.*, App.188 (Governor

[4] Governor DeSantis (@GovRonDeSantis), Twitter (Aug. 17, 2023, 5:57 PM), https://twitter.com/GovRonDeSantis/status/1692294605352415425.

DeSantis arguing that restrictions on purchases of residential property should not be limited to the Chinese government).

Because SB 264's proponents "were aware of the likely disproportionate effect of the law on" Chinese people and Asians, and "nonetheless passed the bill without adopting a number of proposed ameliorative measures that might have lessened this impact," and because the statute's sweeping regulation of ordinary people "is only tenuously related," if at all, "to the legislature's stated purpose," the natural conclusion is that those proponents sought to discriminate against purchasers on the ground of national origin and race. *Veasey v. Abbott*, 830 F.3d 216, 236-37 (5th Cir. 2016) (en banc). Certainly Plaintiffs have shown that those considerations "played some role" in the State's choice to frame this statute so broadly, establishing an FHA violation. *Sailboat Bend Sober Living, LLC v. City of Ft. Lauderdale*, 46 F.4th 1268, 1281 (11th Cir. 2022).

Third, regardless of intent, SB 264 violates the FHA because it has a disparate impact on people whose national origin is in China and who are Asian, and the law is not necessary to advance a legitimate interest. *See Schaw v. Habitat for Human. of Citrus Cnty., Inc.*, 938 F.3d 1259, 1274 (11th Cir. 2019) (plaintiff can demonstrate a discriminatory effect by showing that a policy "makes housing options significantly more restrictive for members of a protected group"). Although the district court faulted Plaintiffs for failing to provide statistics about the disparate

impact of the law, App.37-38, statistics are not required—particularly because, at this stage, Plaintiffs need only establish a likelihood of success. It is exceedingly likely that a law that discriminates against people domiciled in China has a disparate impact on Chinese people such as Plaintiffs—indeed, it is hard to see how the result could be otherwise. *See Bolden-Hardge v. Off. of Cal. State Controller*, 63 F.4th 1215, 1227 (9th Cir. 2023) ("[S]tatistics are not strictly necessary . . . where a disparate impact is obvious.").

The district court further erred in holding that Plaintiffs had failed to show that SB 264 is an "artificial, arbitrary, and unnecessary barrier" to housing. App.38. This is not Plaintiffs' burden under the FHA; instead, the *State* must establish that its law is "necessary" to advance a legitimate interest, and it has failed to do so. *See Inclusive Cmtys.*, 576 U.S. at 541. In any event, Plaintiffs have explained that SB 264 does not advance public safety or any other legitimate interest, *see also* U.S. Statement of Interest, App.245, 251, and that alternatives would have less disparate impact—such as a law limited to foreign powers that does not restrict the availability of housing for ordinary Florida residents like Plaintiffs.

Finally, the court was wrong to fault Plaintiffs for initially raising the disparate-impact argument in a footnote. App.37. Plaintiffs' opening brief repeatedly referred to discriminatory impact, *see* Pls. Br. 21-23; the footnote was substantial and included case citations, *see id.* at 26-27 n.9; and Plaintiffs elaborated on this

argument in their reply, *see* Pls. Reply 13. *Cf. Mock v. Bell Helicopter Textron, Inc.*, 373 F. App'x 989, 992 (11th Cir. 2010) (argument waived where raised "in passing in a footnote only and [appellant] does not elaborate on it in any further detail in either one of its briefs").

B. SB 264 violates the Equal Protection Clause.

The Fourteenth Amendment "entitles both citizens and aliens to the equal protection of the laws of the State in which they reside." *Graham v. Richardson*, 403 U.S. 365, 371 (1971). SB 264 violates the Equal Protection Clause on several grounds. **First**, it expressly discriminates based on national origin, as discussed *supra*; and it fails strict scrutiny, as the State has conceded. *See* App.18.

Second, the statute expressly discriminates based on alienage, as the district court recognized. App.20. Yet the district court erred in relying on a set of 100-year-old Supreme Court cases to hold this discrimination constitutionally permissible. *See* App.20-26 (citing *Terrace v. Thompson*, 263 U.S. 197 (1923)). *Terrace* and its companion cases have been superseded by decades of precedent applying strict scrutiny to state laws discriminating based on alienage. *See, e.g.*, *Bernal v. Fainter*, 467 U.S. 216, 218-22 (1984). Critically, moreover, *Terrace* is not "directly control[ling]" here because it is factually distinguishable. *Jefferson County v. Acker*, 210 F.3d 1317, 1320-21 (11th Cir. 2000). Unlike the law in *Terrace*, which the Supreme Court characterized as not based on "race and color," 263 U.S. at 220, SB

264 expressly singles out people domiciled in particular countries and applies uniquely harsh restrictions and penalties on people domiciled in a single country. *See, e.g.*, *Namba v. McCourt*, 204 P.2d 569, 582 (Or. 1949) (observing that the Equal Protection Clause would no longer permit an alien land law primarily affecting Japanese people, and distinguishing *Terrace* as permitting only even-handed discrimination against all non-citizens).

This Court has made clear that lower courts are under no obligation to extend a discredited Supreme Court case "by even a micron." *Acker*, 210 F.3d at 1320-21. Yet the district court extended *Terrace* by miles—applying it to a novel statute that expressly penalizes people domiciled in China. Even if this Court concludes that SB 264 does not facially discriminate based on national origin, the statute's explicit focus on China and other specific countries takes it far outside of *Terrace*'s ambit.

Finally, even if the standard from *Terrace* applied, SB 264's classifications are "arbitrary" and "unreasonable." *Cf.* App.22. The statute does not advance public safety, *see* U.S. Statement of Interest, App.251, and the State has provided no justification for restrictions on Florida residents "domiciled" in China. It has presented no evidence—none—of a nexus between ownership of homes by Chinese people in Florida and purported harm to national security.

Third, SB 264 violates equal protection because of its discriminatory intent and effects based on national origin, alienage, race, and ethnicity. *See* Part I.A,

supra. Discrimination against Chinese people was, at a minimum, a "motivating factor" driving the law's breadth. *Vill. of Arlington Heights v. Metro. Hous. Dev. Co.*, 429 U.S. 252, 265-66 (1977).

C. SB 264 is preempted.

SB 264 rejects and displaces Congress's carefully calibrated regime governing real estate purchases by foreign nationals. *See* 50 U.S.C. § 4565; 31 C.F.R. Part 802. In so doing, it upends and interferes with Congress's specific judgments about national security and foreign affairs; imposes dramatically more severe penalties; usurps from the President the authority to address national security and foreign policy concerns; and "unilaterally select[s] by name a foreign country" for a State declaration of "economic war." *Odebrecht*, 715 F.3d at 1287 (cleaned up). Under this Court's and Supreme Court precedents, the State's extraordinary claim to dominance in a quintessentially federal arena is conflict preempted. *See Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000).

Under Section 4565, the Committee for Foreign Investment in the United States ("CFIUS") is empowered to review, and the President is empowered to block, domestic transactions by foreign nationals. App.45-46. In 2018, Congress enacted and President Trump signed the Foreign Investment Risk Review Modernization Act of 2018 ("FIRRMA"), Pub. L. 115-232, 132 Stat. 1636, which expanded this authority to include real estate purchases. But Congress carefully balanced the

perceived need for national security review against other considerations, emphasizing that "foreign investment provides substantial economic benefits to the United States, thus "*enhancing* national security." FIRRMA § 1702(b)(1) (emphasis added). Florida disagrees with the balance Congress struck, and has stepped in to replace that approach with its own far more draconian restrictions for Chinese purchasers.

The district court acknowledged Plaintiffs' preemption claim was the "close[st]" in its view, but nevertheless wrongly rejected it. App.42. Primarily, the court sought to limit *Crosby* and *Odebrecht* to federal statutes dealing "principally with international diplomacy," and asserted that this federal regime "address[es] principally security issues." App.47-48. But *Crosby* and *Odebrecht* apply here with equal force. *See United States v. Alabama*, 691 F.3d 1269, 1296 (11th Cir. 2012) (applying *Crosby* to immigration context). Congress delegated the final decision about whether to block a transaction under FIRRMA to the President. 50 U.S.C. § 4565(d)(4); 31 C.F.R. § 802.701. Florida has instead arrogated that power to itself—claiming the authority to decide which countries are threats and adversaries, and how best to address those threats. Permitting every state to declare "economic war" on its preferred set of enemy nations by barring their nationals from purchasing homes "undermines the substantial discretion Congress has afforded the President" in addressing the national security and foreign policy implications of real estate

purchases—thereby "weaken[ing] the President's ability to speak for the Nation with one voice in dealing with" China and other nations. *Odebrecht*, 715 F.3d at 1272, 1281 (cleaned up); *see also Crosby*, 530 U.S. at 381.

Moreover, the district court was wrong to downplay the role of foreign affairs considerations in the federal regime. Congress contemplated an important role for such considerations in the President's ultimate decision whether to block transactions. 50 U.S.C. § 4565(f)(9)(A)-(B), (11). And insofar as CFIUS is focused on "security issues," App.48, those are *national* security threats posed by *foreign powers* and their nationals. Whether and how to limit such foreign economic activity on national security grounds necessarily involves careful consideration of the foreign policy context and implications.

After all, such decisions will frequently have repercussions in the realm of foreign policy—as has already been the case here. Since SB 264 was enacted, the Chinese Embassy has issued multiple statements objecting to the statute for politicizing trade and investment issues and fueling Asian hatred in the United States.[5] This is precisely why the D.C. Circuit concluded that judicial review of the

[5] *See, e.g.*, Rachel Hatzipanagos, *Laws Banning Chinese from Buying Property Dredge Up Old History*, Wash. Post, Aug. 21, 2023, https://www.washingtonpost.com/nation/2023/08/18/florida-chinese-land-laws; *see also* Alan Rappeport, *Spreading State Restrictions on China Show Depths of Distrust in the U.S.*, N.Y. Times, Aug. 21, 2023, https://www.nytimes.com/2023/08/21/us/politics/china-restrictions-distrust.html

President's determination under CFIUS that a transaction is a national security threat, and decision to block that transaction, "would require us to exercise judgment *in the realm of foreign policy* and national security." *Ralls Corp. v. Comm. on Foreign Inv. in U.S.*, 758 F.3d 296, 314 (D.C. Cir. 2014) (emphasis added). A system so intimately tied up with foreign policy judgments is an exclusively federal one, just like the sanctions regimes at issue in *Odebrecht* and *Crosby*.

Nor is the State's regime divorced from foreign policy, as the district court suggested. App 49. As noted above, the statute itself and various statements made by its sponsors expressly tie it to *foreign policy* goals, namely "taking action to stand against the United States' greatest geopolitical threat—the Chinese Communist Party," and "following through on our commitment to crack down on Communist China." App.192 (remarks of Gov. DeSantis). While States may have authority to enact "security" regulations in a general and even-handed way, measures that single out particular countries and nationalities—even if framed in terms of security concerns—infringe on the federal government's foreign affairs powers. *See Zschernig v. Miller*, 389 U.S. 429, 440-41 (1968). The district court's focus on

("'The Chinese government is especially concerned about a proliferation of state-level restrictions'" which "is likely to complicate diplomacy with China and could draw retaliation").

whether the statute was intended to "exert diplomatic pressure," App.49, thus misses the point.[6]

The district court likewise failed to meaningfully address Florida's rejection of Congress's "deliberate choice," *Club Madonna Inc. v. City of Miami Beach*, 42 F.4th 1231, 1254 (11th Cir. 2022), to specifically exempt *all* transactions involving a single housing unit from CFIUS review. 50 U.S.C. § 4565(a)(4)(C)(i). That judgment reflects the reality that the purchase of a home is highly unlikely to pose national security concerns, but regulating every such transaction would wreak major economic and foreign policy harms and invite discrimination, *cf. Crosby*, 530 U.S. at 377-78 (noting Congress's "deliberate effort to steer a middle path"); *Hines v. Davidowitz*, 312 U.S. 52, 73 (1941) (similar). Yet Florida's law *entirely* bans real estate purchases, including of homes, for most Chinese nationals, and the sole exception for home purchases is severely limited.

Because Florida's law "does not countenance . . . the federal regime's exceptions," it "squarely conflicts with the more nuanced federal regime." *Odebrecht*, 715 F.3d at 1282. In response, the district court suggested that SB 264

[6] By contrast, in *Faculty Senate of Florida International University v. Winn*, the statute applied to "countries *determined by the federal government (not especially selected by Florida)* to sponsor terrorism." 616 F.3d 1206, 1210-11 (11th Cir. 2010) (emphasis added); *see also Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 601 (2011) (upholding state law that "closely track[ed] [federal law] in all material respects").

survives because real estate transactions "represent only one small part of the broader CFIUS regime." App.50. But CFIUS's coverage of other kinds of transactions does not allow Florida to reject and undo Congress's considered judgments as to real estate. *See Club Madonna*, 42 F.4th at 1255 n.6 (rejecting similar argument).

SB 264 also "sweeps more broadly than the federal regime" in other key respects. *Odebrecht*, 715 F.3d at 1282. Transactions under federal law are assessed individually, with opportunities to mitigate national security concerns through agreements with CFIUS. 50 U.S.C. § 4565(d)(4), (l)(3)(A). SB 264 simply bars a broad range of transactions, "no ifs, ands, or buts." *Odebrecht*, 715 F.3d at 1282. And not only does SB 264 "penaliz[e] economic conduct that the federal law expressly permits," but even where both regimes apply, there is a dramatic mismatch in the penalties imposed. *Id.* at 1281. Federal law imposes criminal liability only for misleading CFIUS through false statements or omissions, 31 C.F.R. § 802.901, while SB 264 imposes severe criminal sanctions on any purchaser who violates its terms. The careful "congressional calibration of force" is replaced with a broad regime of strict liability. *Crosby*, 530 U.S. at 380; *see Ga. Latino All. for Hum. Rts. v. Governor of Georgia*, 691 F.3d 1250, 1267 (11th Cir. 2012) (similar in immigration context).

Finally, the district court pointed to the "history of state regulation of alien landownership," and asserted there was "no similar history" of state sanctions laws. App.50. But in *Crosby*, Massachusetts in fact relied on the long history of state sanctions laws—and the Supreme Court nevertheless held the state law preempted. 530 U.S. at 387-88. Moreover, neither the district court, nor the State, has pointed to a single statute on the books in 2018 remotely like this one. By singling out nationals of a particular country, and entirely barring home purchases for many of them, Florida has trampled on the federal foreign affairs authority and directly contradicted the specific judgments codified in FIRRMA. Whatever impact the CFIUS regime might have on even-handed state regulation of agricultural land, for example, is simply not presented here; Florida's far more extreme statute is preempted.[7]

D. SB 264 is unconstitutionally vague.

SB 264 subjects purchasers in Florida to severe criminal punishment even though individuals cannot reasonably determine who is subject to the law or what

[7] The district court noted that the federal government weighed in on the FHA and equal protection claims, but did not "take a position at this time" on preemption or due process. App.50. No inference can fairly be drawn from that. This litigation has proceeded quickly, and the Statement of Interest was filed by a Justice Department section with specific expertise on fair housing. It may take longer for the government to opine on issues of foreign policy implicating multiple agencies. In *Crosby*, for example, the federal government took no position in the lower courts, *see Nat'l Foreign Trade Council v. Natsios*, 181 F.3d 38, 54 n.9 (1st Cir. 1999), but later briefed the foreign policy considerations on which the Supreme Court relied, 530 U.S. at 384 n.22.

properties it covers. Even worse for due process purposes, the law subjects homebuyers to *strict* criminal liability, meaning even an honest mistake could result in prosecution.

The district court entirely ignored the heightened due process standards that apply to statutes imposing strict liability. *Compare* App.38-42, *with Vill. of Hoffman Est. v. Flipside, Hoffman Est., Inc.*, 455 U.S. 489, 498-99 (1982) (threat of criminal penalties reduces "[t]he degree of vagueness that the Constitution tolerates."); *Colautti v. Franklin*, 439 U.S. 379, 395 (1979), *abrogated on other grounds, Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022) ("This Court has long recognized that the constitutionality of a vague statutory standard is closely related to whether that standard incorporates a requirement of *mens rea*."). Because SB 264 lacks clear standards and is too vague to put people on fair notice of the conduct it proscribes, it violates due process.

The district court and the State could not even agree on the meaning of "domicile" as it applies to Plaintiffs, *see* App.11-14, yet the district court found its meaning clear enough here to satisfy due process. That was wrong. The district court held that because "domicile" is used in many other areas of the law without raising vagueness problems, its meaning must be sufficiently clear here. App.41. But that ignores two factors that together make this statute different. First, SB 264 imposes strict criminal liability on homebuyers who reach the wrong conclusion about their

domicile, even inadvertently. *Compare, e.g.*, Fla. Stat. § 48.193 (long-arm statute relying on "domicile" for certain types of personal jurisdiction). And second, the meaning of "domicile" is especially unsettled under Florida law as it applies to visa-holders and asylum applicants—two central groups of homebuyers who must now contend with SB 264. *Compare*, *e.g.*, *Juarrero v. McNayr*, 157 So. 2d 79, 80 (Fla. 1963), *with Perez v. Perez*, 164 So. 2d 561, 562 (Fla. 3d DCA 1964). Due process does not tolerate a law that requires individuals to guess about their "domicile" to avoid prison.

The district court's error was compounded by its refusal to recognize how SB 264 fails to put individuals on adequate notice of what properties are covered. In practice, the definitions of "military installation" and "critical infrastructure facility" are impermissibly vague and do not allow individuals to determine whether a given property falls within one of the 5- and 10-mile exclusion zones created by the law. A law must "provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits." *Hill v. Colorado*, 530 U.S. 703, 732 (2000). But instead, homebuyers in Florida are left to make a guess based on Google Maps. *See Doe v. Snyder*, 101 F. Supp. 3d 672, 684 (E.D. Mich. 2015) (rejecting argument that Google Maps could cure vagueness in statutory exclusion zones because it does not "clearly mark property lines" or provide "the necessary detail"). For example, the law defines "military installation" as "a base, camp, post, station, yard, or center

encompassing at least 10 contiguous acres that is under the jurisdiction of the Department of Defense or its affiliates." Fla. Stat. § 692.201(5). People seeking to buy a home face extraordinary difficulty: identifying every potential military site in the vicinity, determining the acreage of each one, and then identifying the exact boundaries of those sites to assess which properties fall inside or outside the exclusion zone. The problem is even worse when it comes to the range of sites—water treatment facilities, chemical plants, electrical power plants, refineries, seaports, and others—that qualify as critical infrastructure.

The district court suggested that because the law attempts to define "military installation" and "critical infrastructure facility," that was enough to satisfy due process regardless of the practical difficulties homebuyers face. App.40-42. But ordinary people must be on notice of what the law prohibits in the real world, not simply in the abstract—especially where strict liability means they risk prosecution. *See United States v. Petrillo*, 332 U.S. 1, 8 (1947) (statute must convey "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices").[8]

[8] The district court stated that "there is no constitutionally protected activity here" to support a pre-enforcement vagueness challenge, App.39, but the right to acquire and own property is a fundamental constitutional right. *See, e.g.*, *Holden v. Hardy*, 169 U.S. 366, 390-91 (1898); *Yick Wo v. Hopkins*, 118 U.S. 356, 367-68 (1886). The State did not contest this.

II. The equities strongly favor Plaintiffs.

Plaintiffs are suffering and will suffer irreparable harm from SB 264.

Plaintiff Xu is scheduled to close on a new home next month, and he will be forced to cancel his contract absent relief. App.123-24; *see also* App.104-05 (Plaintiff Shen's closing scheduled for December 2023). Plaintiffs' chosen properties are unique and irreplaceable, and money damages would be an inadequate remedy at law. *Ebsco Gulf Coast Dev., Inc. v. Salas*, No. 3:15-cv-586-MCR, 2016 WL 11189984, at *4 (N.D. Fla. Sept. 29, 2016); *Johnson v. U.S. Dep't of Agric.*, 734 F.2d 774, 788 (11th Cir. 1984). Similarly, Plaintiff Multi-Choice Realty is already losing customers and suffering damage to its goodwill. *See* App.161, 220-21; *BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 970 (11th Cir. 2005).

SB 264 also imposes discriminatory registration and affidavit requirements. It mandates that Plaintiffs and any other would-be buyer attest under penalty of perjury to their compliance, on pain of third-degree felony charges, up to five years' imprisonment, heavy fines, and property forfeitures. Fla. Stat. § 692.204(8). Given the statute's vagueness, even would-be purchasers who believe themselves permitted to purchase (or incorrectly believe themselves barred) will be deterred and deprived of unique, irreplaceable properties.

More broadly, SB 264 is wreaking havoc for Chinese people throughout the state, given its stigmatizing effects and resulting discrimination in the housing market. Under Eleventh Circuit precedent, irreparable injury must be presumed from these harms. *See Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir. 1984). Not only do the individual plaintiffs face discrimination when seeking to buy a home, but lenders have stated that they are cutting off business with *all* Chinese citizens in Florida, App.220-21. Only an injunction can prevent these multiple dimensions of irreparable injury from dramatically harming the public interest.

Finally, nothing appreciable weighs on the other side of the scale. Not only is there no public interest "in the enforcement of what is very likely an unconstitutional statute," *Odebrecht*, 715 F.3d at 1290, but the State's position—rejected by the district court as to standing—is that the individual Plaintiffs are not covered by the statute, so an injunction as to Plaintiffs and people like them could not possibly harm the State. The State offered no evidence that real estate purchases by Florida residents like Plaintiffs pose any threat to state security, and the United States has supported an injunction while noting that SB 264 "will not advance the State's purported goal of increasing public safety." App.233. The equities weigh decisively in favor of an injunction pending appeal.

III. Appeal of the district court's ruling should be expedited.

Pursuant to I.O.P. 3 of Eleventh Circuit Rule 27-1, Plaintiffs respectfully request that this Court expedite its review of the district court's denial of their motion for a preliminary injunction. Good cause to expedite exists because of the irreparable harm that Plaintiffs are suffering due to SB 264. In addition to the harms detailed above, Plaintiff Shen is scheduled to close on a home in December 2023, and SB 264 imposes discriminatory registration requirements—forcing plaintiffs who are homeowners to register their property with the State by December 31, 2023. Defendants-Appellees consent to this motion and the proposed schedule below:

- Opening brief: due 14 days after the Court rules on Plaintiffs' motion for an injunction pending appeal
- Response brief: due 30 days later
- Reply brief: due 10 days later
- Oral argument: next available argument calendar

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enjoin the challenged provisions of SB 264 pending appeal.

Dated: August 25, 2023

Respectfully submitted,

/s/ Ashley Gorski

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies as follows:

1. This motion contains 6,246 words, excluding the parts of the document exempted by Rule 32(f), in accordance with Plaintiffs–Appellants' motion for excess words, which requested a word limit of 6,250 words and was filed simultaneously with this motion.

2. This motion complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6).

Dated: August 25, 2023

/s/ Ashley Gorski
Ashley Gorski
American Civil Liberties Union Foundation

Attorney for Plaintiffs–Appellants

No. 23-12737
Shen, et al. v. Simpson, et al.
United States Court of Appeals for the Eleventh Circuit

APPENDIX
TABLE OF CONTENTS

[1] Includes an abridged selection of the exhibits originally attached to the declaration.

Exhibit A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

YIFAN SHEN, ZHIMING XU, et al.,

Plaintiffs,

v. **Case No. 4:23-cv-208-AW-MAF**

WILTON SIMPSON, in his official capacity as Florida Commissioner of Agriculture, MEREDITH IVEY, in her official capacity as Acting Florida Secretary of Economic Opportunity, et al.,

Defendants.
_____/

ORDER DENYING PRELIMINARY INJUNCTION MOTION

A new Florida law limits landownership rights of certain noncitizens domiciled in China or other specific countries. *See* Fla. Stat. §§ 692.201-.204. Four Chinese citizens living in Florida, along with a brokerage that does business with Chinese citizens, sued to challenge that new law. They contend it violates the Fourteenth Amendment's Equal Protection and Due Process Clauses, the Fair Housing Act, and the Supremacy Clause. ECF No. 17 (Am. Compl.). They seek declaratory relief and an injunction precluding the law's enforcement.

Defendants are Florida's Agriculture Commissioner, Economic Opportunity Secretary, and Real Estate Commission Chair (collectively the State Defendants),

along with the State Attorneys for Florida's Seventh, Ninth, and Eleventh Judicial Circuits. Am. Compl. at 1.[1]

Plaintiffs moved for a preliminary injunction. ECF No. 23 (MPI). The State Defendants responded in opposition, ECF No. 60 (Resp.), and Plaintiffs replied, ECF No. 65 (Reply). The United States of America filed a brief supporting Plaintiffs' motion, and other amici weighed in too. ECF Nos. 43, 54, 64.[2]

After a nonevidentiary hearing, and having carefully considered the evidence and the parties' arguments, I now deny the motion.

I. BACKGROUND

A. The Challenged Law

The challenged law, codified at Florida Statutes § 692.201-.204, became effective July 1. It restricts land purchases by any "[f]oreign principal," which it defines to include anyone "who is domiciled in a foreign country of concern and is not a citizen or lawful permanent resident of the United States." Fla. Stat.

[1] All citations are to CM/ECF-assigned page numbers.

[2] Several advocacy organizations filed an amicus brief supporting Plaintiffs, ECF No. 43, and twelve States filed an amicus brief supporting the State, ECF No. 64. The Defendant State Attorneys, for their part, have taken no position on the motion or the law's validity. They instead stipulated they would comply with any injunction entered against the State Defendants. ECF No. 55. They did not otherwise respond to the preliminary injunction motion, and they did not appear at the hearing.

§ 692.201(4)(d). It specifies the countries "of concern" are China, Russia, Iran, North Korea, and others. *Id.* § 692.201(3).

Section 692.203 provides that, subject to certain exceptions, "[a] foreign principal may not directly or indirectly own . . . any interest . . . in real property on or within 10 miles of any military installation or critical infrastructure facility." *Id.* § 692.203(1).[3] (The statute defines the terms "military installation" and "critical infrastructure facility," *id.* § 692.201(2), (5), and this order's references to those terms are to the statutory definitions.) Anyone purchasing real property within that protected zone must sign an affidavit attesting that he is not a foreign principal. *Id.* § 692.203(6).

Section 692.203 includes a grandfather provision for foreign principals who owned covered property before the law took effect. Those foreign principals can keep the grandfathered property but cannot acquire any new covered property. *Id.* § 692.203(2). They also must register their property with the Department of Economic Opportunity. *Id.* § 692.203(3)(a). Foreign principals who do not timely register face civil penalties, *id.* § 692.203(3)(b), and those who acquire land in violation of the provision commit a misdemeanor, *id.* § 692.203(8).

[3] One exception provides that "a foreign principal who is a natural person may purchase one residential real property that is up to 2 acres in size" if certain conditions are met. *Id.* § 692.203(4); *see also id.* § 692.204(2).

Section 692.204 imposes additional restrictions, but it applies only to foreign principals domiciled in China—not in other countries "of concern." *Id.* § 692.204(1)(a)(4). Subject to certain exceptions, foreign principals domiciled in China cannot "directly or indirectly own . . . any interest . . . in real property," regardless of its proximity to military installations or critical infrastructure. *Id.* Florida real estate purchasers must sign affidavits attesting that they are not principals of China. *Id.* § 692.204(6)(a); *see also id.* § 692.204(6)(c) (directing the Florida Real Estate Commission to adopt rules regarding the affidavit).

Section 692.204 includes a grandfather provision and registration requirement like those in § 692.203. *Id.* § 692.204(3), (4)(a). It likewise provides for civil penalties for failing to register, *id.* § 692.204(4)(b), and it provides that those who acquire land in violation of the provision commit a third-degree felony, *id.* § 692.204(8).[4]

B. Facts

The facts come from the parties' affidavits. No party requested an evidentiary hearing, and the relevant facts are not in dispute.

[4] Plaintiffs' complaint also attacks a similar provision that restricts purchase of agricultural land. *See* Am. Compl. at 1-2; *see also* Fla. Stat. § 692.202. But at least for purposes of preliminary injunctive relief, Plaintiffs have abandoned that challenge, Reply at 9 n.1, presumably because no Plaintiff has shown any intent to purchase agricultural land.

Multi-Choice Realty is a Florida real estate brokerage that often transacts business with Chinese clients. ECF No. 21-6 ¶¶ 3-5. Plaintiffs Yifan Shen, Zhiming Xu, Xinxi Wang, and Yongxin Liu are native-born citizens of China living in Florida. ECF No. 21-2 ¶¶ 3, 9; ECF No. 21-3 ¶¶ 3, 5; ECF No. 21-4 ¶¶ 3, 9; ECF No. 21-5 ¶¶ 3, 9. They own Florida real estate, plan to buy some, or both. ECF No. 21-2 ¶¶ 12-16, 18; *id.* at 6-18; ECF No. 21-3 ¶¶ 11-12, 18; *id.* at 6-24; ECF No. 21-4 ¶¶ 12-13; ECF No. 21-5 ¶¶ 12-13, 18. Each is lawfully present in the United States, but none has lawful-permanent-resident status. ECF No. 21-2 ¶¶ 6-7; ECF No. 21-3 ¶¶ 6-7; ECF No. 21-4 ¶¶ 6-7; ECF No. 21-5 ¶¶ 6-7. Shen, Liu, and Wang are present on nonimmigrant H-1B or F-1 visas, ECF No. 21-2 ¶ 7; ECF No. 21-4 ¶ 7; ECF No. 21-5 ¶ 7, and Xu has a pending political asylee application, ECF No. 21-3 ¶ 7.

Fearing that the challenged law will restrict their right to own Florida real estate (as to Shen, Xu, Liu, and Wang) or cause lost business (as to Multi-Choice), Plaintiffs initiated this preenforcement lawsuit.

II. PRELIMINARY INJUNCTION STANDARD

"[A] preliminary injunction is an extraordinary and drastic remedy." *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc) (quoting *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998)); *see also Texas v. Seatrain Int'l, S.A.*, 518 F.2d 175, 179 (5th Cir. 1975) ("[W]e must remember that granting a

preliminary injunction is the exception rather than the rule."). It is available only when the party seeking it "clearly establishe[s]" entitlement. *Siegel*, 234 F.3d at 1176 (quoting *McDonald's Corp.*, 147 F.3d at 1306).

To succeed, Plaintiffs must clearly establish four factors: (1) that they have "a substantial likelihood of success on the merits"; (2) that they will suffer irreparable injury without an injunction; (3) that they face a threatened injury that "outweighs whatever damage the proposed injunction may cause" Defendants; and (4) that "the injunction would not be adverse to the public interest." *Id.* Plaintiffs must clearly establish all four factors; failing as to any one is "fatal." *ACLU of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1198 (11th Cir. 2009). Movants most commonly fail on the first factor—substantial likelihood of success, *id.*—which is also generally the "most important," *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986). As explained below, that is where Plaintiffs fall short.

III. PLAINTIFFS HAVE NOT SHOWN A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS.

A. Plaintiffs Have Shown a Substantial Likelihood That They Have Standing.

Before turning to the merits, the court must address standing, an "indispensable" part of every plaintiff's case. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). If Plaintiffs cannot establish standing, they cannot invoke the court's jurisdiction, and they cannot succeed.

To have standing, a plaintiff must first have suffered an "injury in fact," which is the "invasion of a legally protected interest," in a manner that is "concrete and particularized" and not "conjectural" or "hypothetical." *Id.* at 560. Second, there must be a "causal connection" between the injury and the alleged misconduct such that the injury is "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Id.* (cleaned up). Third, it must be "likely"—and not speculative—"that the injury will be redressed by a favorable decision." *Id.* at 561 (marks and citation omitted).

A plaintiff must show each element of standing "in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Id.* At this stage, where Plaintiffs must show a likelihood of success on the merits, they must show a likelihood that they will ultimately prove standing. *See Church v. City of Huntsville*, 30 F.3d 1332, 1339 (11th Cir. 1994); *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913 (D.C. Cir. 2015).

Moreover, because "standing is not dispensed in gross, . . . plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2208 (2021) (citations omitted). If at least one plaintiff has standing to raise each claim, though, the court

need not consider the other plaintiffs' standing. *Hispanic Int. Coal. of Ala. v. Governor of Ala.*, 691 F.3d 1236, 1244 n.6, 1250 (11th Cir. 2012).

The State Defendants argue that Plaintiffs cannot demonstrate standing. Resp. at 22-28. More specifically, they argue that none has shown any concrete harm. *Id.* at 23. But at least one Plaintiff has shown a likelihood that he will be able to prove sufficient injury.

The law has not been enforced against any Plaintiff, but that is not a requirement for standing. "An allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (marks omitted) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013)). Allegations of future harm are not enough, though, when they rest on a "speculative chain" of future contingencies. *Clapper*, 568 U.S. at 414. A two-part test distinguishes "substantial risks" from merely speculative ones. *Dream Defs. v. Governor of the State of Fla.*, 57 F.4th 879, 887 (11th Cir. 2023). First, the plaintiff must intend to engage in "conduct arguably affected with a constitutional interest, but proscribed by a statute." *Id.* (quoting *Susan B. Anthony List*, 573 U.S. at 159). Second, he must show a "credible threat of prosecution." *Id.*

The individual Plaintiffs have shown they likely face a substantial risk of future harm. Each engages in or intends to engage in conduct "arguably affected

with a constitutional interest, but proscribed by" the new law. *Id.* For starters, at least Shen, Xu, and Liu have shown they are likely subject to the law's affidavit requirements. The challenged law requires any "buyer of real property in this state"—notwithstanding domicile—to sign an affidavit attesting that he is not a principal of China. Fla. Stat. § 692.204(6)(a); *see also id.* § 692.203(6)(a) (same requirement for buyers of land near military installations and critical infrastructure). These three Plaintiffs have shown concrete plans to be "buyer[s] of real property" in Florida, including near military installations and critical infrastructure. ECF No. 21-2 ¶¶ 12-16, 18; *id.* at 6-18; ECF No. 21-3 ¶¶ 12, 18; *id.* at 6-24; ECF No. 21-5 ¶¶ 13, 18. That is enough to show that the law will govern their conduct and that they will face harm sufficient to confer standing to challenge the affidavit requirements.

Whether Plaintiffs have standing to challenge the property-acquisition restrictions and registration requirements is a separate question. Again, there must be a plaintiff with standing as to each provision challenged. And while the affidavit requirements apply notwithstanding domicile, the property-acquisition restrictions and registration requirements apply only to certain noncitizens with certain domiciles. The State Defendants argue that Plaintiffs have not shown they are "domiciled" in China and therefore have not shown the law applies to them. Resp. at 22-26. But the record shows that at least Shen and Liu would arguably violate the law by carrying out their plans to buy new property. And it shows that the law likely

requires Wang and Liu to register the property they currently own. Indeed, the State Defendants almost concede that as to Wang. *Id.* at 26 & n.2.

As relevant here, three criteria determine whether a person is a "foreign principal" subject to § 692.203's restrictions: that person must be (1) a noncitizen (2) lacking federal lawful-permanent-resident status and (3) "domiciled" in a "country of concern." Fla. Stat. § 692.201(4)(d). Section 692.204 requires the same except that it only applies to those domiciled in China.

The State Defendants do not dispute the fact that the individual Plaintiffs are all native-born citizens of China who lack lawful-permanent-resident status here. ECF No. 21-2 ¶¶ 3, 6-7; ECF No. 21-3 ¶¶ 3, 6-7; ECF No. 21-4 ¶¶ 3, 6-7; ECF No. 21-5 ¶¶ 3, 6-7. Thus §§ 692.203 and 692.204 restrict Plaintiffs' property ownership if they are "domiciled" in China. The State Defendants argue that as a matter of Florida law, none is domiciled in China because each intends to reside in Florida indefinitely. Resp. at 22-26.

The relevant issue, though, is whether Plaintiffs' conduct is "arguably . . . proscribed by" the new law. *Susan B. Anthony List*, 573 U.S. at 162 (citation omitted). And Shen, Wang, and Liu have shown that they are arguably domiciled in China and risk violating §§ 692.203 and 692.204. The new law, which does not

independently define "domicile,"[5] "sweeps broadly," *Susan B. Anthony List*, 573 U.S. at 162, and arguably applies to Plaintiffs.

The State Defendants do not dispute the fact that these Plaintiffs were once domiciled in China. ECF No. 21-2 ¶ 3; ECF No. 21-4 ¶ 3; ECF No. 21-5 ¶ 3. Plaintiffs' domicile there is "presumed to continue" absent proof of abandonment. *Keveloh v. Carter*, 699 So. 2d 285, 288 (Fla. 5th DCA 1997) (citations omitted). Shen, Wang, and Liu have shown it at least arguable that they did not intend to abandon that domicile.

First, each is in the United States on a federally time-limited, nonimmigrant visa. ECF No. 21-2 ¶ 7 (H-1B worker visa); ECF No. 21-4 ¶ 7 (F-1 student visa); ECF No. 21-5 ¶ 7 (H-1B); *cf.* 8 U.S.C. § 1184(g)(4) (prescribing finite time limit for H-1B visas); *id.* § 1101(15)(F)(i) (same for F-1s); *see also* ECF No. 68 (Hearing Transcript) at 5:16-20. They can apply to change their temporary status (by, for example, applying for lawful-permanent-resident status), but they have not. ECF No. 21-2 ¶ 8; ECF No. 21-4 ¶ 8; ECF No. 21-5 ¶ 8. And to obtain their visas, they

[5] Under Florida law, a person's domicile is not always where he physically resides. *Minick v. Minick*, 149 So. 483, 487-88 (Fla. 1933). It is where he has a good-faith intent to establish his home permanently or indefinitely. *See id.*; *Perez v. Perez*, 164 So. 2d 561, 562-63 (Fla. 3d DCA 1964) (citations omitted). A person can only have one domicile at a time, *Weiler v. Weiler*, 861 So. 2d 472, 477 (Fla. 5th DCA 2003) (citing *Keveloh v. Carter*, 699 So. 2d 285 (Fla. 5th DCA 1997)), and does not acquire a new domicile—even if temporarily absent—without intending to abandon his prior one, *Meisman v. Hernandez*, 353 So. 3d 669, 672-73 (Fla. 2d DCA 2022).

had to declare that they did not intend to remain permanently or indefinitely in the United States. *See* 8 C.F.R. § 214.1(a)(3)(ii); 8 U.S.C. § 1101(15)(F)(i). Although that fact may not be dispositive as to their domicile, it is significant in determining whether the law arguably applies to them. Indeed, often "[t]he best proof of domicile is where the individual says it is." *Weiler v. Weiler*, 861 So. 2d 472, 477 (Fla. 5th DCA 2003) (citation omitted)).

To the extent Plaintiffs' affidavits suggested they do not want to return to China, that reflects their hope to stay in Florida if future contingencies go their way—namely applying for and obtaining lawful-permanent-resident status. *See* ECF No. 21-2 ¶¶ 6-8; ECF No. 21-4 ¶¶ 6-8; ECF No. 21-5 ¶¶ 6-8; *cf. Dandamudi v. Tisch*, 686 F.3d 66, 70 (2d Cir. 2012) (describing the "dual intention" often held by nonimmigrant visa holders). Those hopes perhaps reflect an intent to make Florida "a home in the future." *Keveloh*, 699 So. 2d at 288. But it is at least arguable that they are not intentions to make it "home at the moment," which is necessary for a Florida domicile. *Id.* (citing *Campbell v. Campbell*, 57 So. 2d 34 (Fla. 1952)).

The State Defendants' contrary arguments are unpersuasive. They cite *Perez v. Perez*, in which a Florida court found a Cuban political *refugee* was domiciled in Florida. 164 So. 2d 561 (Fla. 3d DCA 1964); *see also* Resp. at 25; Hearing Trans. at 38-39. Based on that status, the court assumed he intended to remain in Florida indefinitely. *Perez*, 164 So. 2d at 562 (citing "the uncertainty as to when, if ever, the

contingencies necessary to end that period will occur in Cuba"). That case has little value here, because although Xu is an asylum applicant conceivably present in Florida indefinitely, ECF No. 21-3 ¶¶ 7-9, Shen, Wang, and Liu are not.

The State Defendants also cite *Nicolas v. Nicolas*, which affirmed a trial court's finding that a noncitizen was domiciled in Florida notwithstanding his lack of lawful-permanent-resident status. Hearing Trans. at 39 (citing 444 So. 2d 1118 (Fla. 3d DCA 1984)). But the facts surrounding Plaintiffs here are different. Moreover, *Nicolas* makes no mention of whether the alien there was present in the United States on a time-limited visa or, say, illegally.

Turing to the second prong, Plaintiffs have shown a credible threat of prosecution. This standard is "quite forgiving," even at the preliminary injunction stage and outside the First Amendment context. *See Robinson v. Attorney General*, 957 F.3d 1171, 1177 (11th Cir. 2020) (citation omitted). At least one individual Plaintiff here will likely satisfy that forgiving standard as to each claim because Plaintiffs have shown more than a "sequence of uncertain contingencies." *Dream Defs.*, 57 F.4th at 888. They either own property in Florida, including near critical infrastructure or military installations, or have concrete plans to buy it. Their fears are not merely imaginative or speculative.[6]

[6] At the hearing, Plaintiffs' counsel indicated that they were willing to enter into a stipulation with State Defendants that the law did not apply to any individual

At least one Plaintiff, then, has the likelihood of a future concrete harm as to each claim. Plaintiffs have also shown traceability and redressability (which the State Defendants do not contest), because the State Defendants (along with the State Attorney Defendants) enforce the law.[7] *See Dream Defs.*, 57 F.4th at 889; *see also Support Working Animals, Inc. v. Governor of Fla.*, 8 F.4th 1198, 1201 (11th Cir. 2021) ("[W]here, as here, a plaintiff has sued to enjoin a government official from enforcing a law, he must show, at the very least, that the official has the authority to enforce the particular provision that he has challenged, such that an injunction prohibiting enforcement would be effectual."). Given that at least one Plaintiff likely has standing to pursue each claim, I will proceed to the merits.

B. Plaintiffs Have Not Shown a Substantial Likelihood of Success on Their Equal Protection Claim.

Plaintiffs' first claim is that the law violates the Fourteenth Amendment's equal protection guarantee. That guarantee "is essentially a direction that all persons

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Plaintiffs but that no such agreement was reached. Hearing Trans. at 6. This is not dispositive, but it does relate to the threat-of-enforcement inquiry. *Cf. Dream Defs.*, 57 F.4th at 887 ("We have inferred the existence of a credible threat of prosecution when a plaintiff challenged the law soon after it was enacted and the state 'vigorously defended' the law in court." (quoting *Wollschlaeger v. Governor, State of Fla.*, 848 F.3d 1293, 1305 (11th Cir. 2017) (en banc))).

[7] The one exception is the Agriculture Commissioner, whose enforcement authority appears to relate only to the provisions addressing agricultural lands—provisions Plaintiffs do not now challenge, Reply at 9 n.1. This would provide an independent reason to deny relief against Commissioner Simpson.

similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). It applies to both citizens and noncitizens.[8] *Yick Wo v. Hopkins*, 118 U.S. 356, 368-69 (1886); *see also Plyler*, 457 U.S. at 210.

The Equal Protection Clause does not prohibit all classifications, of course. *Estrada v. Becker*, 917 F.3d 1298, 1308 (11th Cir. 2019) (citing *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992)). Generally, state legislation is presumed valid and will be upheld if it is "rationally related to a legitimate state interest." *City of Cleburne*, 473 U.S. at 440 (citations omitted). But that presumption sometimes gives way to strict judicial scrutiny. Certain laws classifying people to be treated differently, or facially neutral laws motivated by a discriminatory purpose, are subject to strict scrutiny. *Miller v. Johnson*, 515 U.S. 900, 920 (1995); *Graham v. Richardson*, 403 U.S. 365, 371-72 (1971); *Hunt v. Cromartie*, 526 U.S. 541, 546 (1999). When strict scrutiny applies, a challenged law is valid only if "narrowly tailored to achieve a compelling interest." *Miller*, 515 U.S. at 920 (citation omitted).

When a statute classifies persons "by race, alienage, or national origin," strict judicial scrutiny usually applies. *City of Cleburne*, 473 U.S. at 440. Race relates to ethnic or ancestry characteristics. *Students for Fair Admissions, Inc. v. President &*

[8] At least to noncitizens physically present in the United States. *See De Tenorio v. McGowan*, 510 F.2d 92, 101 (5th Cir. 1975).

Fellows of Harvard Coll., 143 S. Ct. 2141, 2162-63 (2023) (citing *Rice v. Cayetano*, 528 U.S. 495, 517 (2000)). "Alienage" refers to "not being a citizen of the United States." *United States v. Osorto*, 995 F.3d 801, 822 (11th Cir. 2021) (citations omitted). And "national origin" in the equal protection context means "the particular country in which one was born," which is distinct from citizenship. *Id.*

The Supreme Court's "cases generally reflect a close scrutiny of restraints imposed by States on aliens," but the Court has "never suggested" that *all* state alienage classifications are "inherently invalid" or "suspect." *Foley v. Connelie*, 435 U.S. 291, 294 (1978) (citing *Sugarman v. Dougall*, 413 U.S. 634, 648 (1973)). As to "matters firmly within a State's constitutional prerogatives," the Court's scrutiny has not been "so demanding." *Id.* at 296 (quoting *Dougall*, 413 U.S. at 648); *see also id.* at 295 (noting that applying strict scrutiny to "every statutory exclusion of aliens" would "depreciate the historic values of citizenship" (quoting *Nyquist v. Mauclet*, 432 U.S. 1, 14 (1977) (Burger, C.J., dissenting))).

So, for example, the Court has applied rational-basis review when states disqualified aliens from holding government positions. *Bernal v. Fainter*, 467 U.S. 216, 220-21 (1984) (citing cases). It has rejected the idea that "illegal aliens" are a suspect class. *Plyler*, 457 U.S. at 219 n.19. And, most relevant here, the Court has held that states could deny aliens ownership interests in land within their respective borders absent an arbitrary or unreasonable basis. *Terrace v. Thompson*, 263 U.S.

197, 216-22 (1923); *Porterfield v. Webb*, 263 U.S. 225, 232-33 (1923); *Webb v. O'Brien*, 263 U.S. 313, 324-26 (1923); *Frick v. Webb*, 263 U.S. 326, 332-34 (1923) (collectively, the *Terrace* Cases).

The parties dispute which level of scrutiny applies here. Plaintiffs maintain that strict scrutiny governs, arguing the law facially classifies people based on race, national origin, and alienage. Am. Compl. ¶¶ 89-98; MPI at 18-21, 24-25. Alternatively, they contend the law's enactment was motivated by discrimination against those classes. MPI at 22-23. The State Defendants, on the other hand, argue that the law satisfies equal protection principles under the *Terrace* Cases as to aliens and that it was not motivated by any unlawful animus. Resp. at 30-41.

The standard of review is critical. The State Defendants make no effort to meet the burden they would face if strict scrutiny applied, so if strict scrutiny applied, Plaintiffs would easily meet their burden of showing a substantial likelihood of success on the merits. But under rational basis, Plaintiffs have a substantial burden that they have not come close to meeting. Therefore, Plaintiffs' equal protection claim essentially stands or falls on the applicable level of scrutiny.

As explained below, Plaintiffs are unlikely to show that strict scrutiny applies.

i. Plaintiffs Have Not Shown a Substantial Likelihood that Heightened Scrutiny Applies.

To begin, the challenged law classifies based on where an alien is domiciled, Fla. Stat. § 692.201(4)(d), as Plaintiffs themselves recognize, *see* MPI at 19-20. It

does not facially discriminate against noncitizens based on race or ancestry. It does not discriminate against noncitizens based on "the particular country in which one was born." *Osorto*, 995 F.3d at 822. So contrary to Plaintiffs' arguments, the challenged law is facially neutral as to race and national origin. It would apply to a person of Chinese descent domiciled in China the same way it would apply to a person *not* of Chinese descent domiciled in China. And its application would never turn on a person's race.

To evade this textual reality, Plaintiffs rely on a "proxy" theory. They essentially argue that the law "singles out" noncitizens residing in China and therefore necessarily singles out people born there. Reply at 13-14; *see also* Hearing Trans. at 13. But residency and birthplace do not clearly overlap to the point where they are practically indistinguishable, and Plaintiffs cite no authority for the proposition that classifications based on aliens' residency should nonetheless be treated as birthplace classifications. Nor do they provide evidence supporting the conclusion that the law's "foreign principal" definition, specifically, is effectively a birthplace classification.[9]

[9] When the Court reasoned that an ancestry-based definition was in effect a racial definition in *Rice v. Cayetano*, it did not conclude that in the abstract. 528 U.S. at 514-15. The Court relied on "the historical and legislative context of the particular classification at issue, not on the categorical principle that all ancestral classifications are racial classifications." *Davis v. Guam*, 932 F.3d 822, 834 (9th Cir. 2019).

The challenged law does, though, facially classify by alienage. The State Defendants do not contend otherwise, *see* Resp. at 36, and they hardly could: the law applies only to one who is "*not a citizen* or lawful permanent resident of the United States." Fla. Stat. § 692.201(4)(d) (emphasis added). A United States citizen domiciled in a country of concern is not covered; a noncitizen (who is not a lawful permanent resident) with the same domicile *is* covered. That the law exempts some noncitizens—those not domiciled in countries of concerns—does not make the law neutral as to alienage. *See Nyquist*, 432 U.S. at 7-9; *Graham*, 403 U.S. at 367, 370-76.

The question is whether the alienage classification warrants strict scrutiny. Binding Supreme Court precedent controls this issue. The Court held in *Terrace v. Thompson* that the Fourteenth Amendment did not divest states of the "power to deny to aliens the right to own land within [their] borders." 263 U.S. at 217 (citing *Hauenstein v. Lynham*, 100 U.S. 483, 484, 488 (1879); *Blythe v. Hinckley*, 180 U.S. 333, 340 (1901)); *see also Hauenstein*, 100 U.S. at 484 ("The law of nations recognizes the liberty of every government to give to foreigners only such rights, touching immovable property within its territory, as it may see fit to concede. In our country, this authority is primarily in the States where the property is situated." (citation omitted)); *Blythe*, 180 U.S. at 340-41 ("This [C]ourt has held from the earliest times, in cases where there was no treaty, that the laws of the state where the

real property was situated . . . were conclusive in regard thereto."). The Court recognized that in exercising that power, derived from common-law restrictions on alien landownership, states possess "wide discretion." *Terrace*, 263 U.S. at 218 (quoting *Truax v. Corrigan*, 257 U.S. 312, 337 (1921)); *see also id.* at 217. Thus state laws restricting aliens' right to acquire real property satisfy equal protection so long as they are rational. *See id.* at 216-21; *see also Dougall*, 413 U.S. at 653 (Rehnquist, J., dissenting) (noting that the Court applied rational-basis review in the *Terrace* Cases).

Applying those principles, *Terrace* upheld a Washington law that barred most aliens from acquiring land interests. *See* 263 U.S. at 212-13. The law, which included criminal penalties, did not apply to aliens who declared a good-faith intent to seek United States citizenship. *Id.* Applying *Terrace* in three other cases decided right after it, the Court held that a similar California statute restricting landownership by ineligible aliens satisfied equal protection. *Porterfield*, 263 U.S. at 232-33 (rejecting that the classification "was arbitrary or unreasonable"); *O'Brien*, 263 U.S. at 324-26 ("No constitutional right of the alien is infringed."); *Frick*, 263 U.S. at 332-34 ("The state has power . . . to deny to ineligible aliens permission to own, lease, use, or have the benefit of lands within its [borders] for agricultural purposes." (citation omitted)). Each time, the Court reaffirmed that states must be afforded wide discretion when classifying aliens, *Porterfield*, 263 U.S. at 233; *Frick*, 263 U.S. at

333-34, because the "quality and allegiance of those who own, occupy and use" a state's lands "are matters of highest importance and affect the safety and power of the state itself," *Terrace*, 263 U.S. at 221; *see also O'Brien*, 263 U.S. at 324 (citing *Terrace*, 263 U.S. at 221).

The law challenged here is entitled to like deference. Like the statutes at issue in the *Terrace* Cases, Florida enacted the challenged law pursuant to states' long-recognized "power to deny to aliens the right to own land within [their] borders." *Terrace*, 263 U.S. at 217; *cf. Hauenstein*, 100 U.S. at 484. That means it satisfies equal protection so long its classification is not "arbitrary or unreasonable." *Porterfield*, 263 U.S. at 232-33.

In their opening brief, Plaintiffs made no real attempt to distinguish the *Terrace* Cases. *See* MPI at 24. But in their reply, Reply at 15-16, and at the hearing, they argued that the *Terrace* rule only permits "even-handed" discrimination against noncitizens at large. *See id.*; *see also Frick*, 263 U.S. at 333 (noting the statute "limit[ed] the privileges of all ineligible aliens"). In other words, they suggest that even if state laws applying to *all* noncitizens are valid under *Terrace*, state laws applying only to citizens of specific countries are not. But even accepting this premise (for argument's sake), it would not help Plaintiffs. The law here does not

treat aliens differently based on their country of foreign citizenship.[10] Instead, the law applies to *any* noncitizen *domiciled* in one of the specified countries.

Moreover, although the law necessarily restricts land ownership by some aliens (foreign principals) but not others, that does not mean the law lacks general application or escapes the *Terrace* Cases' holdings. *Terrace* itself upheld a law that allowed some aliens (those intending to become citizens) to own land but not others. Nonetheless, "[t]he inclusion of good faith declarants in the same class with citizens d[id] not unjustly discriminate against aliens who [we]re ineligible or against eligible aliens who have failed to declare." *Terrace*, 263 U.S. at 219-20; *cf. id.* at 218 (concluding law complied with due process because it "appl[ied] alike and equally to all aliens"). Nor did California's classification, which allowed some aliens (those eligible for citizenship) to own land but not others. *See Frick*, 263 U.S. at 333 ("The state has power . . . to deny to ineligible aliens permission to own, lease, use, or have the benefit of lands . . . .").

To be sure, the law's classification does differ from the classifications at issue in the *Terrace* Cases in a literal sense: Washington and California classified based on noncitizens' eligibility for citizenship, and Florida's law classifies based on the

[10] The statute at issue in *De Tenorio*, 510 F.2d at 101, by contrast, did: "Nonresident aliens *who are citizens of Syria or the Lebanese Republic*" may inherit land in Mississippi, but all other nonresident aliens cannot. Miss. Code § 89-1-23.

noncitizens' domicile. This, though, does not make *Terrace* inapplicable. The Court recognized in *Porterfield* that a state can tailor an alienage classification (as it relates to property ownership) to meet "its own problems, depending on circumstances existing there." 263 U.S. at 233 ("We cannot say that the failure of the California Legislature to extend the prohibited class [to the same extent as Washington] . . . was arbitrary or unreasonable."). After all, "[i]t is not always practical or desirable that legislation shall be the same in different states," and states are not bound by the alienage classifications adopted by others. *Id.*

The *Terrace* Cases cannot be meaningfully distinguished here. And to their credit, Plaintiffs acknowledge the obstacle those cases pose to their alienage-based equal protection claim.[11] *See* MPI at 24. They therefore argue that the *Terrace* Cases are no longer good law, that "those cases do not govern here" because later Supreme Court decisions "supersede[]" them. *Id.* But this argument, too, falls short.

The *Terrace* Cases are directly on point for the issue here—to what extent may Florida restrict aliens' landownership. *See Terrace*, 263 U.S. at 217. Those cases reaffirmed—in no uncertain terms—that states may "deny to aliens the right to own land within [their] borders" absent an arbitrary reason. *Id.* at 216-17 (citations omitted); *see also Porterfield*, 263 U.S. at 233. Moreover, the facts surrounding the

[11] The United States, on the other hand, ignores the *Terrace* Cases altogether in presenting its equal protection argument.

new law's classification "line up closely" with the *Terrace* Cases' facts. *Jefferson County v. Acker*, 210 F.3d 1317, 1320 (11th Cir. 2000). Florida's law, like the Washington and California laws, restrict alien landownership and impose criminal penalties for violations.

Because the *Terrace* Cases are on-point Supreme Court precedent, they bind this court. *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 67 (1996); *see also Acker*, 210 F.3d at 1320. Lower courts "have a constitutional obligation to follow a precedent of [the Supreme] Court unless and until it is overruled by [that] Court." *Ramos v. Louisiana*, 140 S. Ct. 1390, 1416 n.5 (2020) (Kavanaugh, J., concurring) (citation omitted). That the Court has overruled a precedent must be explicit—it "does not normally overturn, or so dramatically limit, earlier authority *sub silentio*." *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 18 (2000); *see also Solymar Invs., Ltd. v. Banco Santander S.A.*, 672 F.3d 981, 990 n.9 (11th Cir. 2012) ("[T]he Supreme Court has never explicitly overruled its holding . . . and we will not assume a case has been overturned in the absence of such explicit language . . . ." (citations omitted)); *Rafferty v. Denny's, Inc.*, 13 F.4th 1166, 1182 (11th Cir. 2021) ("[T]he Supreme Court is certainly capable of saying what it means . . . .").

The Plaintiffs—and others—have argued that the Supreme Court would not decide the *Terrace* Cases today the way it did in 1923. And perhaps they are right. But it is up to the United States Supreme Court to decide whether to overturn its own

precedents. Unless or until it does, lower courts must follow those precedents. *Rodriguez de Quijas v. Shearson/Am. Exp. Inc.*, 490 U.S. 477, 484 (1989); *Mallory v. Norfolk S. Ry. Co.*, 143 S. Ct. 2028, 2038 (2023) (reasoning state court erred by concluding intervening case law "implicitly overruled" Supreme Court precedent); *Acker*, 210 F.3d at 1320 ("[T]he Supreme Court has insisted on reserving to itself the task of burying its own decisions."); *Evans v. Sec'y, Fla. Dep't of Corr.*, 699 F.3d 1249, 1263 (11th Cir. 2012); *United States v. Greer*, 440 F.3d 1267, 1275-76 (11th Cir. 2006); *Fla. League of Prof'l Lobbyists, Inc. v. Meggs*, 87 F.3d 457, 462 (11th Cir. 1996). The *Terrace* decision thus binds this court even if its rule "cannot be squared with" the Court's later cases. *Evans*, 699 F.3d at 1264 (quoting *Agostini v. Felton*, 521 U.S. 203, 208-09 (1997)). This is so even if the decision has "increasingly wobbly, moth-eaten foundations." *Id.* (quoting *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997)). Or even if it has been "cut . . . back so far that it will not survive." *Brisentine v. Stone & Webster Eng'g Corp.*, 117 F.3d 519, 525-26 (11th Cir. 1997).

Plaintiffs have not suggested that the Court has overruled the *Terrace* Cases by name. In fact, the Court has repeatedly and expressly declined to reexamine those decisions. When the Court held in *Oyama v. California* that California's "Alien Land Law" violated a U.S. citizen's equal protection right as applied, the Court "deem[ed] it unnecessary and therefore inappropriate to reexamine" the *Terrace* Cases. 332

U.S. 633, 646-47 (1948).[12] The Court also deemed it unnecessary in *Takahashi v. Fish & Game Commission*, 334 U.S. 410, 422 (1948) ("[a]ssuming the continued validity of" the *Terrace* Cases), and *Graham v. Richardson*, 403 U.S. at 374 (declining to resolve "the contemporary vitality" of special public-interest cases such as *Terrace*)—two cases where the Court held state laws violated aliens' equal protection rights. Each time, the Court—at most—merely distinguished the *Terrace* rule. *See Takahashi*, 334 U.S. at 422 (noting *Terrace* "rested solely upon the power of states to control the devolution and ownership of land within their borders").

Oyama, on which Plaintiffs heavily rely (as well as state-court decisions interpreting it), involved an entirely different issue than the *Terrace* Cases and this one. *See* Am. Compl. ¶¶ 6-7; MPI at 24; Reply at 15-16. *Oyama* concerned only "the right of *American citizens* to own land," *Oyama*, 332 U.S. at 647 (emphasis added), and held California's statute discriminated against a *citizen* based on his parents' national origin, *see id.* at 640; *cf. Osorto*, 995 F.3d at 822. *Oyama* plainly did not overrule the *Terrace* Cases by outcome or otherwise. *See Oyama*, 332 U.S. at 647 ("[W]e do not reach [whether] the Alien Land Law denies ineligible aliens the equal protection of the laws.").

[12] The petitioners in *Oyama* challenged a different provision of the same statute that was at issue in *Porterfield*, *O'Brien*, and *Frick*. *See Oyama*, 332 U.S. at 641-42.

Unable to rely on any express overruling, Plaintiffs essentially argue *Takahashi* and the alienage cases that followed it have implicitly overruled the *Terrace* Cases. They rely heavily on the fact that the *Terrace* Cases predated the Court's modern two-tiered equal protection analysis, *see* MPI at 24, which generally treats aliens as a "discrete and insular" class for which strict scrutiny is appropriate, *Graham*, 403 U.S. at 372 (quoting *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938)).

Plaintiffs are correct that, "[o]ver time, the Court's decisions gradually have restricted the activities from which States are free to exclude aliens." *Ambach v. Norwick*, 441 U.S. 68, 73 (1979). Besides *Takahashi* (exclusion from commercial fishing) and *Graham* (exclusion from welfare benefits), the Court has held states cannot discriminate against aliens seeking law licenses, *In re Griffiths*, 413 U.S. 717, 718 (1973), engineering licenses, *Examining Bd. of Eng'rs v. Flores de Otero*, 426 U.S. 572, 599-606 (1976), financial education assistance, *Nyquist*, 432 U.S. at 12, or certain public employment, *Dougall*, 413 U.S. at 646-49. But reconciling these later cases with the *Terrace* Cases is not difficult—none involved an equal protection challenge to states' power "to control the devolution and ownership of land within their borders, a power long exercised and supported on reasons peculiar to real property." *Takahashi*, 334 U.S. at 422; *see also Hauenstein*, 100 U.S. at 484; *Blythe*, 180 U.S. at 340-41; *cf. Chirac v. Chirac's Lessee*, 15 U.S. (2 Wheat) 259, 272 (1817)

(reasoning that, absent a federal treaty to the contrary, whether noncitizen could inherit land in Maryland "depend[ed] on the law of Maryland"). *Terrace*, *Porterfield*, *O'Brien*, and *Frick* did, as does this case. That the newer cases can be reconciled, though, is almost beside the point. Either way, I am bound to apply the on-point *Terrace* precedent.

At the end of the day, because the Supreme Court itself has not overruled the *Terrace* Cases, this court must apply them. This court has no power to declare the *Terrace* Cases "implicitly overruled" or superseded. *Mallory*, 143 S. Ct. at 2038; *see also Fla. League of Prof'l Lobbyists, Inc.*, 87 F.3d at 462. And applying the *Terrace* Cases, I conclude Plaintiffs have not shown it likely that heightened scrutiny would apply to the alienage classification.

There is also one additional, independent reason why I conclude Plaintiffs have not shown heightened scrutiny applies: the law exempts noncitizens who are lawful permanent residents. Fla. Stat. § 692.201(4)(d). Even in its more recent decisions, the Supreme Court has applied strict scrutiny only to laws affecting lawful permanent aliens. *See LeClerc v. Webb*, 419 F.3d 405, 415 (5th Cir. 2005); *see also League of United Latin Am. Citizens v. Bredesen*, 500 F.3d 523, 532-34 (6th Cir. 2007) ("There are abundant good reasons, both legal and pragmatic, why lawful permanent residents are the only subclass of aliens who have been treated as a

suspect class."). Thus, even putting the *Terrace* Cases aside, I would conclude that Plaintiffs have not shown a likelihood that heightened scrutiny would apply.

ii. Plaintiffs Are Unlikely to Show Strict Scrutiny Applies Under Arlington Heights.

Plaintiffs alternatively claim that intentional racial, national-origin, and alienage discrimination motivated the new law. MPI at 21-23. Laws motivated by such discrimination can be subjected to heightened scrutiny. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264-68 (1977); *Hunt*, 526 U.S. at 546; *see also Jean v. Nelson*, 711 F.2d 1455, 1483-1502 (11th Cir. 1983) (applying *Arlington Heights* in equal protection case concerning race, national origin, and alienage), *on reh'g*, 727 F.2d 957 (11th Cir. 1984) (en banc), *aff'd*, 472 U.S. 846 (1985). But Plaintiffs have not shown a substantial likelihood that unlawful animus motivated the Legislature.[13]

[13] For purposes of the *Arlington Heights* analysis alone, I will proceed as though the new law were facially neutral as to alienage. Cases discussing *Arlington Heights* suggest its application is limited to "facially neutral law[s]." *E.g.*, *Hunt*, 526 U.S. at 546; *cf. Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 213 (1995) (noting challenge to statute explicitly classifying based on race "present[ed] none of the additional difficulties posed by laws that, although facially race neutral, result in racially disproportionate impact and are motivated by a racially discriminatory purpose" (citing *Arlington Heights*)). Plaintiffs cited no cases in which a court found intentional discrimination against a class under *Arlington Heights* after concluding the statute, on its face, lawfully treated that class differently. *See* Hearing Trans. at 93:2-16. And it is unclear how a facial alienage classification subject to rational-basis review under *Terrace* could nonetheless be subject to strict scrutiny under *Arlington Heights* because it was motivated by *citizenship-based* discrimination. Of

To succeed on this alternative claim, Plaintiffs have to prove discriminatory animus; impact alone is not enough. *Arlington Heights*, 429 U.S. at 264-65 (citing *Washington v. Davis*, 426 U.S. 229, 242 (1976)). Plaintiffs must prove, in other words, that the Legislature enacted the new law "'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

Discerning legislative purpose is not always easy. It "is an inherently complex endeavor" that demands a "sensitive inquiry." *Hunt*, 516 U.S. at 546 (quoting *Arlington Heights*, 426 U.S. at 266). And in undertaking this sensitive inquiry, courts must presume the Legislature acted in good faith. *League of Women Voters of Fla., Inc. v. Fla. Sec'y of State*, 32 F.4th 1363, 1373 (11th Cir. 2022) (citing *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018)).

Direct evidence is rarely available to rebut that presumption, and Plaintiffs offered none here. Instead, Plaintiffs look to rely on objective, circumstantial indicators of intent—the so-called *Arlington Heights* factors: (1) disproportionate impact, (2) historical background, (3) departures from usual procedure, (4) substantive departures, and (5) legislative history, including decisionmakers' statements. 429 U.S. at 264-68. The Eleventh Circuit has supplemented this

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course, this is not an issue as to Plaintiffs' intentional race- and origin-discrimination claims—the law is clearly facially neutral in those respects.

nonexhaustive list with three other factors: (6) foreseeability of the impact; (7) knowledge of that impact, and (8) availability of less discriminatory alternatives. *Greater Birmingham Ministries v. Sec'y of State for State of Ala.*, 992 F.3d 1299, 1322 (11th Cir. 2021) (citing *Jean*, 711 F.2d at 1486).

Having considered those factors, I conclude Plaintiffs have not shown a substantial likelihood that the Florida Legislature enacted the law "because of," rather than merely "in spite of," foreign principals' protected characteristics. Plaintiffs point to no procedural or substantive departures, or any less discriminatory alternatives that Florida did not consider, *cf.* MPI at 23 (stating in passing that "far less discriminatory alternatives were available" without identifying any).

Plaintiffs primarily rely only on two varieties of the *Arlington Heights* factors—those regarding the law's impact and Legislators' statements. As for impact, Plaintiffs argue "[t]he overwhelming number of people in Florida" subject to the law are Chinese. *Id.* at 23. They cite no evidence supporting that, and they cite no evidence about the number of those subject to the law who are *not* of Chinese descent. Nor do Plaintiffs cite any evidence that the law will disproportionately impact people born in China.

The most relevant impact-related evidence that Plaintiffs offer are legislative committee reports. *E.g.*, ECF No. 21-39 at 21-22. At best, however, these reports evince awareness of the consequences for aliens domiciled in China. *Cf. Feeney*, 442

U.S. at 279. "Discriminatory purpose" requires more than that. *Id.* And as to race and national origin, the reports do not even show any awareness of consequences for those of Chinese descent or those born in China.

As for the statements from the Governor or Legislators, none evinces racial animus or any intent to discriminate based on race or where someone was born. Nor do they show any intent to discriminate against Chinese citizens "because of" their Chinese citizenship. Instead, the statements are consistent with motivations independent of any protected traits. *See, e.g.*, ECF No. 21-11 at 3 (statement that "[w]ith political upheaval and economic turmoil taking place in many foreign countries, Florida must act to insulate our food supply and . . . make sure that foreign influences like China will not pose a threat to [it]"); ECF No. 21-12 at 3 (statement that the law would "fight . . . efforts" to cause a "food and water" crisis in Florida).

Plaintiffs have not shown that these statements indicate animus against any protected group. Without more, these are not statements that can be "fairly read to demonstrate discriminatory intent by the state legislature." *League of Women Voters of Fla., Inc.*, 32 F.4th at 1373. This is especially so when considering the presumption of legislative good faith, which this court must afford. *Id.* Even without any such presumption, though, Plaintiffs' evidence falls short.

Moreover, even if these few actors' statements reasonably reflected unlawful animus (which they do not), the statements would be minimally probative at best.

"The Supreme Court has repeatedly cautioned against overemphasizing statements from individual legislators, which are not necessarily 'what motivates scores of others' to act (or, in this case, not act)." *Fusilier v. Landry*, 963 F.3d 447, 466 (5th Cir. 2020) (first quoting *United States v. O'Brien*, 291 U.S. 367, 384 (1968); then citing *Hunter v. Underwood*, 471 U.S. 222, 228 (1985)). The question is not whether a Legislator or two had discriminatory animus; the question is about the motivation of the Legislature as a whole.

Plaintiffs have not met their burden of showing a substantial likelihood of success on the merits of their discriminatory-intent claim.

v. Plaintiffs Are Unlikely to Show the Law Lacks Any Rational Basis.

Having concluded that Plaintiffs have not shown a substantial likelihood that strict scrutiny applies, I now turn to Plaintiffs' fallback argument—presented for the first time at the hearing—that the law cannot survive even rational basis. Hearing Trans. at 22:24-23:1.

State laws satisfy rational-basis review so long as "there is *any* reasonably conceivable state of facts" supporting a legitimate state purpose. *Estrada*, 917 F.3d at 1310-11 (quoting *Heller v. Doe*, 509 U.S. 312, 320 (1993)). With rational-basis review, statutes have "a strong presumption of validity," *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 314 (1993), so Plaintiffs face a formidable burden. They must "negative every conceivable basis which might support" the law. *Id.* at 315 (quoting

Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 364 (1973)). Plaintiffs have not shown any likelihood that they can overcome that significant burden.

To the extent Plaintiffs contend the law is ill conceived or unlikely to provide Florida any real benefit, those arguments miss the point. "[E]qual protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *Id.* at 313. "Moreover, because [courts] never require a legislature to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." *Id.* at 315.

Although the state has no burden to justify its classification, the State has offered justifications that are consistent with those recognized as sufficient in the *Terrace* Cases. *See Terrace*, 263 U.S. at 221 (reasoning that "[t]he quality and allegiance of those who own, occupy and use the farm lands within its borders are matters of highest importance and affect the safety and power of the state itself"); *O'Brien*, 263 U.S. at 324; *see also von Kerssenbrock-Praschma v. Saunders*, 121 F.3d 373, 378 (8th Cir. 1997); *Shames v. Nebraska*, 323 F. Supp. 1321, 1333-36 (D. Neb. 1971) (three-judge court). Regardless, Plaintiffs have not shown a substantial likelihood that they will meet their burden and negate every conceivable basis that might justify the law.

* * *

In sum, Plaintiffs have not shown a substantial likelihood of success on their equal protection claim.

C. Plaintiffs Have Not Shown a Substantial Likelihood of Success on Their Fair Housing Act Claim.

Plaintiffs' next argument is that the law is preempted by—or otherwise violates—the Fair Housing Act. The FHA makes it unlawful to "refuse to sell . . . or to refuse to negotiate for the sale . . . or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a). It also provides that any state law is invalid if it "purports to require or permit any action that would be a discriminatory housing practice." *Id.* § 3615. A "[d]iscriminatory housing practice" is "an act that is unlawful under section 3604" or certain other provisions. *Id.* § 3602(f).

The problem for Plaintiffs is that, as noted above, Florida's law does not make any classification based on "race, color, religion, sex, familial status, or national origin." It instead classifies based on alienage, citizenship, and lawful-permanent-resident status—none of which are covered by the FHA. *Cf. Espinoza v. Farah Mfg. Co.*, 414 U.S. 86, 88, 95 (1973) (holding that Title VII—which forbids employment discrimination "because of . . . race, color, religion, sex, or national origin"—did not "make[] it illegal to discriminate on the basis of citizenship or alienage").

Plaintiffs correctly note that under the FHA, a state may not "facially single out [a protected class] and apply different rules to them." MPI at 26 (alterations in

MPI) (quoting *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1500 (10th Cir. 1995)). But, again, the FHA does not include alienage or citizenship as protected characteristics. This is therefore unlike the cases Plaintiffs cite. In *Bangerter*, the claim was that a zoning decision violated the FHA because it discriminated against the intellectually disabled plaintiff, 46 F.3d at 1494-95, and the FHA explicitly forbids housing discrimination "because of a handicap." 42 U.S.C. § 3604(f). Similarly, in *Larkin v. State of Michigan Department of Social Services*, the challenged statutes, "[b]y their very terms . . . appl[ied] only to [adult foster care] facilities which will house the disabled, and not to other living arrangements." 89 F.3d 285, 290 (6th Cir. 1996) (cited in MPI at 26).

The Plaintiffs also argue that—text aside—the new law's *purpose* was to discriminate based on national origin and race. MPI at 26. This argument fails for the same reason as the related equal protection argument failed: Plaintiffs have not shown a likelihood that they can prove any impermissible intent or purpose.

Finally, Plaintiffs suggest in a footnote that they could show an FHA violation solely based on disparate impact. *Id.* at 26 n.10. I decline to address an independent argument raised in a footnote. But Plaintiffs have not shown a likelihood of success on such a claim anyway. They have shown no evidence of disparate impact, asking the court instead to assume one. Reply at 20. Even if I assume the disparity, though, that alone is not enough to support a claim. "[D]isparate-impact liability has always

been properly limited in key respects that avoid the serious constitutional questions that might arise under the FHA . . . if such liability were imposed based solely on a showing of a statistical disparity." *Tex. Dept. of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 540 (2015). Moreover, "[g]overnmental . . . policies are not contrary to the disparate-impact requirement unless they are 'artificial, arbitrary, and unnecessary barriers.'" *Id.* at 543 (quoting *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971)); *see also id.* at 533 (holding that before rejecting a government's policy justification, "a court must determine that a plaintiff has shown that there is an available alternative practice that has less disparate impact and serves the entity's legitimate needs" (cleaned up) (quoting *Ricci v. DeStefano*, 557 U.S. 557, 578 (2009))). Although Plaintiffs' footnote does include the conclusory statement that the law "creates an 'artificial, arbitrary, and unnecessary barrier[]' to housing that virtually exclusively affects Chinese people and people from other 'countries of concern,'" MPI at 26 n.10 (quoting *Inclusive Cmtys.*, 576 U.S. at 540), Plaintiffs have not shown arbitrariness, as discussed above.

D. Plaintiffs Have Not Shown a Substantial Likelihood of Success on Their Void-for-Vagueness Claim.

Plaintiffs next contend that three of the new law's terms are unconstitutionally vague as applied: "critical infrastructure facility," "military installation," and "domicile." Am. Compl. ¶ 105; MPI at 28-36.

The Fourteenth Amendment's Due Process Clause "encompasses the concepts of notice and fair warning." *Bankshot Billiards, Inc. v. City of Ocala*, 634 F.3d 1340, 1349 (11th Cir. 2011). A statute violates that Clause as impermissibly vague where it "is so unclear . . . that persons of common intelligence must necessarily guess at its meaning and differ as to its application." *Indigo Room, Inc. v. City of Fort Myers*, 710 F.3d 1294, 1301 (11th Cir. 2013) (quoting *Mason v. Fla. Bar*, 208 F.3d 952, 958 (11th Cir. 2000)).

Preenforcement vagueness challenges are cognizable only under limited circumstances, namely when the challenged statute chills the litigant "from engaging in constitutionally protected activity." *Bankshot Billiards, Inc.*, 634 F.3d at 1350; *see also Indigo Room, Inc.*, 710 F.3d at 1301; *Woodruff v. U.S. Dept. of Labor, Off. of Workers Comp. Program*, 954 F.2d 634, 643 (11th Cir. 1992) ("A rule that does not reach constitutionally protected conduct is void for vagueness only if it is impermissibly vague in all its applications." (citing *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 499 (1982))). There is no constitutionally protected activity here; Plaintiffs wish to engage in economic transactions. Nonetheless, the State Defendants do not contest Plaintiffs' ability to bring a preenforcement vagueness claim; they defend the vagueness challenge solely on the merits. Hearing Trans. at 43:25-44:7. Ultimately, the justiciability issue does not

matter, though, because I conclude Plaintiffs are unlikely to show that the challenged provisions are unconstitutionally vague.[14]

First, the law defines "critical infrastructure facility" and "military installation" in detail—giving fair notice of the specific facility types that qualify.[15] Refineries, power plants, airports, military camps, and so forth are plainly not such "broad, vague terms" so as to leave people guessing as to their meaning. MPI at 31. Plaintiffs fault the Legislature for not cataloging every facility that would satisfy these definitions—or including a "map" to that end. But through this argument, they demand far more than the Due Process Clause requires. *See High Ol' Times, Inc. v.*

[14] Plaintiffs' motion says that at this stage, they present only an as-applied vagueness claim, not a facial one. MPI at 29-30. Plaintiffs provided insufficient facts, though, to support any as-applied vagueness claim. *See United States v. Duran*, 596 F.3d 1283, 1290 (11th Cir. 2010) ("If a vagueness challenge to a statute does not involve the First Amendment, the analysis must be as applied to the facts of the case." (citations omitted)). Their purported limitation of their challenge to "people (1) who reside in the United States but are not U.S. citizens or legal permanent residents; (2) whose country of origin is a 'country of concern' under SB 264; and (3) who own or seek to purchase real property in Florida," MPI at 30—is not much of a limitation at all. It certainly does not provide the court a concrete set of facts against which a proper vagueness challenge could apply.

[15] "Critical infrastructure facility means . . . , if it employs measures such as fences, barriers, or guard posts," chemical manufacturing facilities, refineries, electrical power plants, water treatment plants, natural gas terminals, telecommunications central switching offices, gas processing plans, seaports, spaceports, and airports. Fla. Stat. § 692.201(2). "Military installation[s]" are any "base, camp, post, station, yard, or center encompassing at least 10 contiguous acres that is under the jurisdiction of the Department of Defense or its affiliates." *Id.* § 692.201(5).

Busbee, 673 F.2d 1225, 1229 (11th Cir. 1982) (noting that "absolute precision in drafting laws is not demanded" (citations omitted)).

Second, as the State Defendants point out, "domicile" is a legal term that many jurisdictions' statutes commonly use. Resp. at 28. And it has a settled meaning in Florida case law. *See supra* Part III.A; *see also* Mitchell J. Waldman, *"Legal Residence" or "Domicile"; Permanent or Primary Residence*, 20 Fla. Jur. 2d Domicile & Residence § 1 (June 2023 update). Plaintiffs rely heavily on the fact that the statute does not independently define the term, MPI at 28, 33-35, but that does not render it "so unclear" as to violate due process, *Indigo Room, Inc.*, 710 F.3d at 1301 (citation omitted); *see also Rose v. Locke*, 423 U.S. 48, 49-50 (1975) ("Even trained lawyers may find it necessary to consult . . . judicial opinions before they may say with any certainty what some statutes may compel or forbid.").

Finally, to the extent Plaintiffs are unsure whether the property they seek to buy is covered, it is not from some ambiguity in the statute but from Plaintiffs' own uncertainty about the facts. They note, for example, that they would have to determine measurements and find out—perhaps with some difficulty—whether specific installations "encompass at least 10 contiguous acres." MPI at 31 (citing Fla. Stat. § 692.201(5)). This argument misunderstands the vagueness inquiry. "What renders a statute vague is not the possibility that it will sometimes be difficult to determine whether the incriminating fact it establishes has been proved; but rather

the indeterminacy of precisely what that fact is." *United States v. Williams*, 553 U.S. 285, 306 (2008); *cf. also id.* at 305-06 (rejecting claim "that the mere fact that close cases can be envisioned renders a statute vague" because "[c]lose cases can be imagined under virtually any statute").

At bottom, Plaintiffs have fallen well short of showing a substantial likelihood of success on their void-for-vagueness claim. They point to no authority finding void any terms like those they argue about here.

E Plaintiffs Have Not Shown a Substantial Likelihood of Success on Their CFIUS Preemption Claim.

Plaintiffs' final argument is that the law is preempted by federal law restricting certain transactions involving foreign nationals. MPI at 37-47. Plaintiffs contend that "[i]n a carefully crafted set of statutes, regulations, and executive actions, a federal regime already addresses potential national security concerns related to real estate purchases." *Id.* at 37. And, they contend, Florida's new law stands as an obstacle to the implementation of that federal law. This issue is closer than the others, but Plaintiffs have not met their burden here either.

"Under the Supremacy Clause, the Constitution and the laws of the United States 'shall be the supreme Law of the Land.' From this Clause we have the preemption doctrine, and any state law that 'interferes with, or is contrary to,' federal law is preempted." *Estrada*, 917 F.3d at 1302 (cleaned up) (first quoting U.S. Const. art. VI, cl. 2, then quoting *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 211 (1824)).

"Although preemption law cannot always be neatly categorized, [courts] generally recognize three classes of preemption." *United States v. Alabama*, 691 F.3d 1269, 1281 (11th Cir. 2012) (citing *Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1167 (11th Cir. 2008)). One category is express preemption, which arises when a statute explicitly states that it preempts state law. *Id.* The FHA, addressed above, provides an example of express preemption. *See* 42 U.S.C. § 3615 ("[A]ny law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid."). Plaintiffs' claim here, though, is not express preemption.

The second category is field preemption, which "occurs when a congressional legislative scheme is 'so pervasive as to make the reasonable inference that Congress left no room for the states to supplement it.'" *Alabama*, 691 F.3d at 1281 (quoting *Browning*, 522 F.3d at 1167). The third type is conflict preemption, which comes in two forms: There is conflict preemption "when it is physically impossible to comply with both the federal and the state laws." *Id.* (quoting *Browning*). And there is also conflict preemption "when the state law stands as an obstacle to the objective of the federal law." *Id.* (quoting *Browning*). Plaintiffs here claim the latter but not the former.

When addressing any type of preemption, courts are guided by two principles. "First, the purpose of Congress is the ultimate touchstone in every preemption case," and that intent "primarily is discerned from the language of the pre-emption statute and the 'statutory framework' surrounding it." *Marrache v. Bacardi U.S.A., Inc.*, 17 F.4th 1084, 1094 (11th Cir. 2021) (cleaned up) (first quoting *Wyeth v. Levine*, 555 U.S. 555, 565 (2009); then quoting *Graham v. R.J. Reynolds Tobacco Co.*, 857 F.3d 1169, 1186 (11th Cir. 2017)). "Second, we assume that 'the historic police powers of the States are not superseded unless that was the clear and manifest purpose of Congress.'" *Id.* at 1095 (quoting *Fresenius Med. Care Holdings, Inc. v. Tucker*, 704 F.3d 935, 939-40 (11th Cir. 2013)). "This principle particularly applies in a case in which Congress has legislated in a field which the States have traditionally occupied." *Id.* (cleaned up) (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)).

With those principles in mind, I turn to the two forms of preemption Plaintiffs argue.

i. Plaintiffs Have Not Shown a Substantial Likelihood of Success on Their Obstacle Preemption Claim.

Plaintiffs first argue that the law stands as an obstacle to existing federal law addressing noncitizens' land purchases. MPI at 37-38 (contending that "[t]he federal government has a detailed and carefully calibrated system for monitoring, mitigating, and blocking certain real estate purchases if they threaten national

security"). As the Supreme Court has made clear, this claim requires a substantial showing. *Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 607 (2011) ("Our precedents 'establish that a high threshold must be met if a state law is to be preempted for conflicting with the purposes of a federal Act.'" (quoting *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 110 (1992) (Kennedy, J., concurring in part and concurring in judgment))).

To determine whether Florida's new law creates an unconstitutional obstacle to this federal law, the court must carefully analyze the federal laws at issue. *See Fresenius*, 704 F.3d at 939 ("We use our judgment to determine when state law creates an unconstitutional obstacle to federal law, and 'this judgment is informed by examining the federal statute as a whole and identifying its purpose and intended effects.'" (quoting *Ga. Latino All. for Human Rts. v. Governor of Ga.*, 691 F.3d 1250, 1263 (11th Cir. 2012))); *see also Club Madonna Inc. v. City of Miami Beach*, 42 F.4th 1231, 1254 (11th Cir. 2022) (inquiry requires "examin[ing] the statutory text, its regulatory framework, and, if necessary, the legislative history . . . to determine whether Congress made a deliberate choice to exclude").

The ultimate issue is Congress's intent; the analysis therefore "does not justify a 'freewheeling judicial inquiry into whether a state statute is in tension with federal objectives'; such an endeavor 'would undercut the principle that it is Congress rather

than the courts that pre-empts state law.'" *Whiting*, 563 U.S. at 607 (quoting *Gade*, 505 U.S. at 111 (Kennedy, J., concurring in part and concurring in judgment)).

The federal regime at issue has its origins in The Defense Production Act of 1950, which Congress enacted to advance national security. The Act's purpose was "to ensure the vitality of the domestic industrial base" so the United States is prepared for and can "respond to military conflicts, natural or man-caused disasters, or acts of terrorism within the United States." 50 U.S.C. § 4502(a)(1), (2). Congress amended the Act several times. In a 1988 amendment, known as the Exon-Florio amendment, Congress added section 721, which gave the President authority to suspend or prohibit various transactions. *See Ralls Corp. v. Comm. on Foreign Inv. in U.S.*, 758 F.3d 296, 302 (D.C. Cir. 2014) (describing the amendment). This codified the establishment of the Committee for Foreign Investment in the United States (CFIUS). *See id.* (explaining CFIUS background). Then, in 2018, through the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Congress further revised section 721 to (among other things) authorize the President to suspend or prohibit certain real estate transactions. 50 U.S.C. § 4565(d)(4).

Under the federal regime, CFIUS makes an initial determination about whether certain real estate transactions threaten national security, and the President can then issue an order prohibiting those transactions. *Id.* §§ 4565(b); 4565(d)(4). The categories of transactions at issue include a foreign person's purchase of land

"in close proximity to a United States military installation or another facility or property of the United States Government that is sensitive for reasons relating to national security," as well as land that "could reasonably provide the foreign person the ability to collect intelligence on activities being conducted at such an installation, facility, or property," or that "could otherwise expose national security activities at such an installation, facility, or property to the risk of foreign surveillance." *Id.* § 4565(a)(4)(B)(ii)(I)-(II). Notwithstanding these general categories, Congress carved out certain real estate transactions. A foreign person, for example, may purchase a single "housing unit" or real estate in "urbanized areas." *Id.* § 4565(a)(4)(C)(i)(I), (II).

In arguing that Florida's law serves as an obstacle to this federal regime, Plaintiffs rely principally on *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000), and *Odebrecht Construction, Inc. v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013). In each, the Court found that a state law designed to put economic pressure on foreign nations served as "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Crosby*, 530 U.S. at 377 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)); *Odebrecht*, 715 F.3d at 1286 (quoting *Crosby* quoting *Hines*).

These cases offer little support for Plaintiffs' position. The relationship between the state laws and the federal regimes in those cases was quite different than

the relationship here. For one, the federal regimes in *Crosby* and *Odebrecht* dealt principally with international diplomacy. *Crosby*, 530 U.S. at 386; *Odebrecht*, 715 F.3d at 1285. Thus, as the Supreme Court later recognized, the law in *Crosby* involved a "uniquely federal area[] of regulation," namely the "foreign affairs power." *Whiting*, 563 U.S. at 604 (citing *Crosby*, among other cases). The Eleventh Circuit's *Odebrecht* decision—which tracked *Crosby*—recognized the same unique federal interest. And in both cases, the Courts found both that the state laws were themselves seeking to pressure the foreign governments and that their tactics stood as unmistakable obstacles to the federal government's diplomatic goals. *Crosby*, 530 U.S. at 386 (noting that "the state Act stands in the way of Congress's diplomatic objectives"); *Odebrecht*, 715 F.3d at 1285 ("It is hard to dispute that the Cuba Amendment undermines the President's capacity to fine-tune these sanctions and to direct diplomatic relations with Cuba."); *id.* at 1279 (finding that "the purpose of the Cuba Amendment is to use the lever of access to Florida's $8 billion-a-year public contracting market to exert additional economic pressure on the Cuban government and to influence American foreign policy").

The federal laws Plaintiffs point to here, on the other hand, address principally security issues. *See* 50 U.S.C. § 4502(a)(1), (2) (noting purpose "to ensure the vitality of the domestic industrial base" so the United States is prepared for and can "respond to military conflicts, natural or man-caused disasters, or acts of terrorism

within the United States"); 31 C.F.R. § 800.101(a) (explaining that 50 U.S.C. § 4565 "authorizes the Committee on Foreign Investment . . . to review any covered transaction, . . . , and to mitigate any risk to the national security of the United States that arises as a result of such transactions" and that the President can "suspend or prohibit" such transactions "when, in the President's judgment, there is credible evidence that . . . the foreign person engaging in a covered transaction might take action that threatens to impair the national security of the United States"). It is true, as Plaintiffs point out, Reply at 26, that in the comprehensive statutory list of factors the President may consider in determining whether to forbid a transaction, Congress included "the potential effects of the proposed or pending transaction on sales of military goods, equipment, or technology" to countries in certain categories. 50 U.S.C. § 4565(f)(4)(A)-(B). But the thrust of the federal regime is not to exert diplomatic pressure on foreign nations. And neither is that the purpose of the Florida law. *Cf. Fac. Senate of Fla. Int'l Univ. v. Winn*, 616 F.3d 1206, 1210-11 (11th Cir. 2010) (upholding Florida law precluding funding for state-employee travel to certain countries, rejecting comparison to *Crosby*, and noting that funding statute no "more than incidentally invades the realm of federal control of foreign affairs").[16]

[16] It is also noteworthy—and consistent with the diplomatic thrust—that *Crosby* and *Odebrecht* both relied on the fact that the United States received diplomatic objections to the state laws. *See Crosby*, 530 U.S. at 382-83; *Odebrecht*, 715 F.3d at 1285. These facts are "not controlling," *Fac. Senate of Fla. Int'l Univ.*,

Second, real estate transactions—or restrictions on real estate transactions—represent only one small part of the broader CFIUS regime. It covers commercial transactions—such as mergers, acquisitions, takeovers, or essentially any type of investment in a United States critical infrastructure business—as well as any sort of transaction designed to evade CFIUS review. 50 U.S.C. § 4565(a)(4) (defining "covered transaction"). In fact, as the State Defendants note, CFIUS's jurisdiction did not even reach standalone real estate sales until 2018. Resp. at 51 (citing Pub. L. No. 115-232, sec. 1703, § 721(a)(4)(B)(ii), 132 Stat. 2177 (codified at 50 U.S.C. § 4565(a)(4)(B)(ii))). The state laws in *Crosby* and *Odebrecht*, on the other hand, interfered directly with a primary purpose of the federal regime they affected. *See supra*.

Third, as noted above, there is a history of state regulation of alien landownership. There is no similar history of states using economic leverage to affect foreign policy. True, states' preexisting regulation in this area does not, alone, defeat the claim. *See Crosby*, 530 U.S. at 384-85 (invalidating Massachusetts law as providing an obstacle to subsequently enacted federal law). But longstanding state regulation of alien landownership counsels against a finding that Congress intended

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616 F.3d at 1207, but it is worth noting that there are no similar complaints in this record. *Cf. id.* ("Nothing in the record suggests that the United States or any other government has complained about the Act to Florida or that some foreign government has complained to the federal government about the Act.").

to usurp all state authority in that area without explicitly saying so. *Cf. Wyeth*, 555 U.S. at 574 ("If Congress thought state-law suits posed an obstacle to its objectives, it surely would have enacted an express pre-emption provision at some point during the FDCA's 70-year history.").

In short, Plaintiffs have not met the "high threshold" necessary to show a likelihood that Florida's law is an obstacle to the federal regime. *Whiting*, 563 U.S. at 607.[17]

ii. Plaintiffs Have Not Shown a Substantial Likelihood of Success on Their Field Preemption Claim.

As a fallback, Plaintiffs argue field preemption, which applies only when federal regulation is "so pervasive as to make the reasonable inference that Congress

[17] One additional note: The United States submitted a "Statement of Interest," arguing that Florida's law violates Equal Protection and the FHA. ECF No. 54. One would think that if Florida's law stood as a complete obstacle to the full implementation of federal law, the United States would have said so in that filing. But instead, the brief said the "United States does not take a position at this time on the merits of any claims not addressed in this Statement of Interest," including the obstacle-preemption claim. *Id.* at 6 n.5; *cf. Geier v. Am. Honda Motor Co., Inc.*, 529 U.S. 861, 883 (2000) (considering federal agency view regarding preemption: "Congress has delegated to DOT authority to implement the statute; the subject matter is technical; and the relevant history and background are complex and extensive. The agency is likely to have a thorough understanding of its own regulation and its objectives and is 'uniquely qualified' to comprehend the likely impact of state requirements. . . . In these circumstances, the agency's own views should make a difference." (citations omitted)); *Williamson v. Mazda Motor of Am., Inc.*, 562 U.S. 323, 335 (2011) ("Finally, the Solicitor General tells us that DOT's regulation does not pre-empt this tort suit. As in *Geier*, 'the agency's own views should make a difference.'").

left no room for the states to supplement it." *Alabama*, 691 F.3d at 1281 (marks omitted) (quoting *Browning*, 522 F.3d at 1167). *See* MPI at 47. Plaintiffs do little to develop this argument, which spans only a half page. But just as Plaintiffs have not shown a likelihood that the Florida law stands as an obstacle to the implementation of federal law, they have not shown that the federal law at issue is so pervasive as to demonstrate that Congress left no room for state regulation. Indeed, the federal law Plaintiffs rely on is not pervasive at all. Plaintiffs have again not met their high burden.

CONCLUSION

Plaintiffs have not shown a substantial likelihood of success on the merits. That failure precludes preliminary injunctive relief, *ACLU of Fla.*, 557 F.3d at 1198, so I do not consider the remaining preliminary injunction factors.

The amended preliminary injunction motion (ECF No. 23) is DENIED.

Within 21 days, the parties must confer and submit a joint report stating their positions on whether the stay should continue, *see* ECF No. 48. If they do not agree the stay should continue, the report must set out each side's position on an appropriate litigation schedule.

SO ORDERED on August 17, 2023.

s/ *Allen Winsor*
United States District Judge

Exhibit B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

YIFAN SHEN, ZHIMING XU, et al.,

Plaintiffs,

v. **Case No. 4:23-cv-208-AW-MAF**

WILTON SIMPSON, in his official capacity as Florida Commissioner of Agriculture, MEREDITH IVEY, in her official capacity as Acting Florida Secretary of Economic Opportunity, et al.,

Defendants.
_____/

ORDER DENYING MOTION FOR INJUNCTION PENDING APPEAL

The court denied Plaintiffs' motion for preliminary injunction, ECF No. 69, and Plaintiffs appealed, ECF No. 70. Plaintiffs now seek an injunction pending appeal. ECF No. 71.

"An injunction pending appeal is an extraordinary remedy." *State of Florida v. Dep't of Health & Human Servs.*, 19 F.4th 1271, 1279 (11th Cir. 2021) (marks omitted) (quoting *Touchston v. McDermott*, 234 F.3d 1130, 1132 (11th Cir. 2000) (en banc)). To obtain this extraordinary remedy, Plaintiffs must establish—among other things—"a substantial likelihood that [they] will prevail on the merits of the appeal." *Id.* In denying preliminary injunctive relief, I concluded Plaintiffs have not shown a substantial likelihood that they will succeed here. ECF No. 69. And in their

current motion, Plaintiffs have not presented anything showing otherwise. Indeed, "Plaintiffs recognize . . . that this Court is unlikely to grant [an injunction pending appeal], given that the four-factor test governing Plaintiffs' entitlement to an injunction pending appeal is essentially the same test that this Court applied in denying Plaintiffs' motion for a preliminary injunction." ECF No. 71 at 2.

Plaintiffs have not shown entitlement to an injunction pending appeal. Accordingly, the motion (ECF No. 71) is DENIED.

SO ORDERED on August 23, 2023.

s/ *Allen Winsor*
United States District Judge

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

YIFAN SHEN, ZHIMING XU, XINXI WANG, YONGXIN LIU, and MULTI-CHOICE REALTY, LLC, *Plaintiffs*, v. WILTON SIMPSON, in his official capacity as Florida Commissioner of Agriculture, MEREDITH IVEY, in her official capacity as Acting Florida Secretary of Economic Opportunity, PATRICIA FITZGERALD, in her official capacity as Chair of the Florida Real Estate Commission, R.J. LARIZZA, in his official capacity as State Attorney for the 7th Judicial Circuit, MONIQUE WORRELL, in her official capacity as State Attorney for the 9th Judicial Circuit, and KATHERINE FERNANDEZ RUNDLE, in her official capacity as State Attorney for the 11th Judicial Circuit, *Defendants*.	Case No. 4:23-cv-208-AW-MAF

FIRST AMENDED COMPLAINT

I. INTRODUCTION

1. This lawsuit challenges a new Florida law, SB 264, that imposes discriminatory prohibitions on the ownership and purchase of real property based on race, ethnicity, alienage, and national origin—and imposes especially draconian

restrictions on people from China. *See* Laws of Fla. ch. 2023-33, §§ 3–8, at 5–15 (CS for CS for SB 264) (to be codified at Fla. Stat. §§ 692.201–.205). Plaintiffs—four individual Chinese citizens who reside in Florida, and a real estate brokerage firm that principally serves Chinese and Chinese American clients—are subject to the law's restrictions and its broad effects. They will be forced to cancel purchases of new homes, register their existing properties with the State under threat of severe penalties, and face the loss of significant business. The law stigmatizes them and their communities, and casts a cloud of suspicion over anyone of Chinese descent who seeks to buy property in Florida.

2. Under this discriminatory new law, people who are not U.S. citizens or permanent residents, and whose "domicile" is in China, will be prohibited from purchasing property in Florida. A similar but less restrictive rule will apply to people whose permanent home is in Cuba, Venezuela, or other "countries of concern." The sole exception to these prohibitions is incredibly narrow: people with non-tourist visas or who have been granted asylum may purchase one residential property under two acres that is not within five miles of any "military installation" in the state. Notably, there are more than 20 military bases in Florida, many of them within five miles of city centers like Orlando, Tampa, Jacksonville, Pensacola, Panama City, and Key West, and there are many other military sites across the state that may qualify as military installations. Florida's new law will also impose requirements on people

from China and other "foreign countries of concern" to register properties they currently own, at the risk of civil penalties and civil forfeiture. People who own or acquire property in violation of the law are subject to criminal charges, imprisonment, and fines.

3. This law is unconstitutional. It violates the equal protection and due process guarantees under the U.S. Constitution; it intrudes on the federal government's power to superintend foreign affairs, foreign investment, and national security; and it recalls the wrongful animus of similar state laws from decades past—laws that were eventually struck down by courts or repealed by legislatures.

4. In May 1882, more than one hundred and forty years ago, the United States passed the Chinese Exclusion Act, banning all Chinese laborers from immigrating to the country for ten years. The primary reasons for the law's enactment included unwanted ethnic economic competition and the racialized theory that Chinese people were unassimilable pagans. It was the first and only major U.S. law ever implemented to prevent all members of a specific racial group from immigrating to the United States. The law remained in force until 1943, when China became a wartime ally of the United States against Japan.

5. In May 1913, one hundred and ten years ago, California enacted the "Alien Land Law," barring Asian immigrants from owning land. More than a dozen states, including Florida, followed suit, adopting similar Alien Land Laws restricting

Asians' rights to hold land in America. The purpose was to discourage and prevent "non-desirable" Asian immigrants from settling permanently in the United States and its territories.

6. In 1948, the U.S. Supreme Court held that the 14th Amendment rights of Fred Oyama, a U.S. citizen and the son of Japanese immigrants, had been violated when the State of California moved to repossess land purchased by Oyama's non-citizen father in Oyama's name while the family was incarcerated in an internment camp. *Oyama v. California*, 332 U.S. 633 (1948).

7. As a result of the *Oyama* decision and other developments in equal protection case law, most of the country's Alien Land Laws were repealed or struck down in the 1950s. Florida's state constitution was the last to contain an alien land law provision until 2018, when voters passed a ballot measure to repeal it.

8. Through this action, Plaintiffs seek a declaratory judgment that Florida's new discriminatory property law (hereinafter, "Florida's New Alien Land Law") violates the U.S. Constitution and federal statutory law, and an injunction to stop the enforcement of the law against Plaintiffs.

II. PARTIES

9. Plaintiff Yifan Shen is an individual and natural person, as well as a citizen of the People's Republic of China, lawfully residing in Florida.

10. Plaintiff Zhiming Xu is an individual and natural person, as well as a

citizen of the People's Republic of China, lawfully residing in Florida.

11. Plaintiff Xinxi Wang is an individual and natural person, as well as a citizen of the People's Republic of China, lawfully residing in Florida.

12. Plaintiff Yongxin Liu is an individual and natural person, as well as a citizen of the People's Republic of China, lawfully residing in Florida.

13. Plaintiff Multi-Choice Realty, LLC is a limited liability corporation organized under Florida law, with its principal place of business in Florida.

14. Defendant Wilton Simpson is the Florida Commissioner of Agriculture and heads the Florida Department of Agriculture and Consumer Services ("FDACS"). Fla. Stat. §§ 20.14(1), 570.01. FDACS is one of the agencies charged with implementing and enforcing Florida's New Alien Land Law. *Id.* § 692.202(3)(a), (6)(b), (9).[1]

15. Defendant Meredith Ivey is Acting Florida Secretary Economic Opportunity and heads the Florida Department of Economic Opportunity ("DEO"). *Id.* § 20.60(2).[2] DEO is one of the agencies charged with implementing and enforcing Florida's New Alien Land Law. *Id.* §§ 692.203(3)(a), (10), .204(7)(b), (10).

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[1] Citations to the provisions of SB 264 are to the statutory sections where it is to be codified.

[2] The Department of Economic Opportunity will be renamed as the "Department of Commerce" effective July 1, 2023, and the Interim Secretary of Economic Opportunity will be succeeded by the Secretary of Commerce. Laws of Fla. ch. 2023-173, § 10, at 8.

16. Defendant Patricia Fitzgerald is Chair of the Florida Real Estate Commission ("FREC"). In that role, she may exercise all of FREC's powers, except disciplinary and rulemaking powers. *Id.* § 475.03. FREC is one of the agencies charged with implementing Florida's New Alien Land Law. *Id.* §§ 692.202(5)(c), .203(6)(c), .204(6)(c).

17. Defendant R.J. Larizza is the State Attorney for Florida's 7th Judicial Circuit, where Plaintiff Yongxin Liu currently resides. In that role, he is responsible for investigating and bringing criminal charges against Plaintiff Yongxin Liu or other similarly situated people under Florida's New Alien Land Law. *Id.* §§ 692.202(7)–(8), .203(8)–(9), .204(8)–(9).

18. Defendant Monique Worrell is the State Attorney for Florida's 9th Judicial Circuit, where Plaintiffs Yifan Shen, Zhiming Xu, reside and where Multi-Choice Realty, LLC resides and conducts much of its business. In that role, she is responsible for investigating and bringing criminal charges against these Plaintiffs or other similarly situated people under Florida's New Alien Land Law. *Id.* §§ 692.202(7)–(8), .203(8)–(9), .204(8)–(9).

19. Defendant Katherine Fernandez Rundle is the State Attorney for Florida's 11th Judicial Circuit, where Plaintiff Xinxi Wang resides. In that role, she is responsible for investigating and bringing criminal charges against Plaintiff Xinxi Wang or other similarly situated people under Florida's New Alien Land Law. *Id.*

§§ 692.202(7)–(8), .203(8)–(9), .204(8)–(9).

III. JURISDICTION AND VENUE

20. This Court has subject-matter jurisdiction over this action pursuant to: 28 U.S.C. § 1331 because this action arises under the U.S. Constitution and federal law; 28 U.S.C. § 1343 and 42 U.S.C. § 1983 because this action seeks to redress the deprivation of and infringement upon, under color of state law, rights, privileges, and immunities secured by the U.S. Constitution or federal law providing for the equal rights of all persons within the jurisdiction of the United States; and 42 U.S.C. § 3613 because this action is based upon a violation of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, which prohibits discrimination in real estate transactions.

21. There is an actual, present, justiciable controversy between the parties within the meaning of Article III of the U.S. Constitution, as the recent enactment of Florida's New Alien Land Law constitutes a present and continuing infringement of Plaintiffs' federal constitutional and civil rights.

22. This Court has authority to grant declaratory relief in this action pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, as well as 28 U.S.C. § 1343, 42 U.S.C. §§ 1983 and 3613, and Rule 57 of the Federal Rules of Civil Procedure.

23. In addition, this Court has authority to grant injunctive relief in this action under the All Writs Act, 28 U.S.C. § 1651, as well as 28 U.S.C. § 1343,

42 U.S.C. §§ 1983 and 3613, and Rule 65 of the Federal Rules of Civil Procedure.

24. This Court has personal jurisdiction over Defendants, all of whom are either elected or appointed Florida state officials, working or residing in Florida. The Court's exercise of jurisdiction over Defendants in their official capacities as Florida state government officials is appropriate pursuant to *Ex Parte Young*, 209 U.S. 123 (1909).

25. Venue in this Court is proper pursuant to 28 U.S.C. § 1391 because one or more defendants reside in the judicial district in which this Court is based and a substantial part of the events or omissions giving rise to the claims herein occurred in the judicial district in which this Court is based.

IV. STATEMENT OF FACTS

A. The Enactment of Florida's Alien Land Law and Its Background

26. Florida's New Alien Land Law was enacted as part of a larger law, Senate Bill 264. This lawsuit raises claims with respect to the portions of SB 264 establishing prohibitions on landownership based on race, ethnicity, color, alienage, and national origin, which are to be codified as Part III of Chapter 692 of the Florida Statutes at Sections 692.201 through 692.205, formally titled, "Conveyances to Foreign Entities."

27. SB 264 and its companion measure, HB 1355, were introduced in the Florida Senate and House on March 2, 2023. After several amendments in both

chambers, the Legislature passed SB 264 on May 4, 2023.

28. On May 8, SB 264 was presented in its final form to Governor Ron DeSantis. Within hours, Governor DeSantis signed it into law, along with two other pieces of legislation, SB 258 and SB 846, all of which are focused on restricting the rights of Chinese people based on race, ethnicity, color, alienage, and national origin. Laws of Fla. chs. 2023-32 (CS for CS for SB 258), 2023-34 (CS for CS for SB 846). According to Governor DeSantis, all three bills are purportedly meant to "counteract the malign influence of the Chinese Communist Party in the state of Florida."[3]

29. That same day, Governor DeSantis issued a press release, titled "Governor Ron DeSantis Cracks Down on Communist China." In the press release, Governor DeSantis stated:

> Florida is taking action to stand against the United States' greatest geopolitical threat—the Chinese Communist Party. I'm proud to sign this legislation to stop the purchase of our farmland and land near our military bases and critical infrastructure by Chinese agents, to stop sensitive digital data from being stored in China, and to stop CCP influence in our education system from grade school to grad school. We are following through on our commitment to crack down on Communist China.[4]

30. Despite the rhetoric, in 2022, Chinese buyers were involved in only 0.1 percent of all real estate purchases in Florida—they purchased only one out of every

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[3] Press Release, *Governor Ron DeSantis Cracks Down on Communist China* (May 8, 2023), https://www.flgov.com/2023/05/08/governor-ron-desantis-cracks-down-on-communist-china/.
[4] *Id.*

1,000 residential properties sold in the state. Chinese buyers did not even crack the top-ten list of foreign buyers by country in 2022, with Chinese buyers constituting no more than two percent of all foreign buyers.[5]

31. In his statements about the new law, Governor DeSantis presented no evidence that Chinese buyers of property in Florida are agents of the Chinese Communist Party or have caused harm to national security. Indeed, the State of Florida has failed to identify any nexus between real estate ownership by Chinese citizens in general and purported harm to national security.

32. Florida's New Alien Land Law severely restricts ownership of real estate by Chinese buyers. Not only are there strict prohibitions regarding foreign ownership and purchases of agricultural land and real property within ten miles of a military installation or critical infrastructure facility, but the new law goes so far as to categorically ban Chinese people from owning and acquiring any kind of real property in Florida, with only narrow exceptions.

33. The new landownership restrictions will take effect in Florida on July 1, 2023. Laws of Fla. ch. 2023-33 § 12, at 18.

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[5] Florida Realtors, *2022 Profile of International Residential Transactions in Florida* at 6–8, https://www.floridarealtors.org/sites/default/files/basic-page/attachments/2023-04/2022%20Profile%20of%20International%20Residential%20Transactions%20in%20Florida.pdf (last accessed May 22, 2023). In 2022, the largest share of foreign buyers in Florida were buyers from Latin America and the Caribbean (45 percent), followed by buyers from North America (21 percent), Europe (18 percent), Asia and Oceania (7 percent), and Africa (1 percent). *Id.* at 7.

B. The Statutory Scheme for Implementing and Enforcing Florida's New Alien Land Law

34. Florida's New Alien Land Law establishes, *inter alia*, prohibitions on landownership in the state based on race, ethnicity, color, alienage, and national origin.

35. There are two main categories of landownership prohibitions under Florida's New Alien Land Law. The first category applies to certain people from "foreign countries of concern," including China, and prohibits them from owning or acquiring any agricultural land and real property within ten miles of a military installation or critical infrastructure facility, subject to narrow exceptions. The second category of prohibitions is even more restrictive: it applies specifically to certain people from China, singling them out based on race, ethnicity, color, alienage, and national origin, and prohibiting them from owning or acquiring any real property in the State of Florida, subject to narrow exceptions.

i. Provisions Targeting "Foreign Principals" from Seven Specific "Foreign Countries of Concern"

36. Sections 692.202 and 692.203 of the Florida Statutes prohibit "foreign principals" from specific "foreign countries of concern" from acquiring certain kinds of land in the State of Florida. Specifically, the prohibitions extend to two kinds of land: (i) agricultural land, Fla. Stat. § 692.202(1), and (ii) real property on or within ten miles of any military installation or critical infrastructure facility, *id.*

§ 692.203(1).

37. However, "critical infrastructure facility"[6] and "military installation"[7] are so broadly defined under Florida's New Alien Land Law that they bar affected individuals from being able to purchase property across much of the state.

38. With respect to real estate in both contexts, the law defines the term "foreign country of concern" as: "the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern." *Id.* § 692.201(3).

39. For each "foreign country of concern," the law prohibits certain persons, called "foreign principals," from landownership. The term "foreign principal" includes "[a]ny person who is domiciled in a foreign country of concern and is not a citizen or lawful permanent resident of the United States," *id.*

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[6] "Critical infrastructure facility" is defined as "any of the following, if it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized persons: (a) A chemical manufacturing facility[;] (b) A refinery[;] (c) An electrical power plant as defined in s. 403.031(2)[;] (d) A water treatment facility or waste water treatment plant[;] (e) A liquid natural gas terminal[;] (f) A telecommunications central switching office[;] (g) A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas[;] (h) A seaport as listed in s. 311.09[;] (i) A space port territory defined in s. 331.303(18)[;] (j) An airport as defined in s. 333.01." Fla. Stat. § 692.201(2).

[7] "Military installation" is defined as "a base, camp, post, station, yard, or center encompassing at least 10 contiguous acres that is under the jurisdiction of the Department of Defense or its affiliates." Fla. Stat. § 692.201(5).

§ 692.201(4)(d), and "[a] partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country of concern, or a subsidiary of such entity," *id.* § 692.201(4)(c).

40. Florida's New Alien Land Law prohibits "foreign principals" from each "foreign country of concern" from "directly or indirectly own[ing], having a controlling interest in, acquir[ing] by purchase, grant, devise, or descent" any agricultural land or real property within ten miles of any military installation or critical infrastructure facility, or any interest therein, "except a de minimus [*sic*] indirect interest." *Id.* §§ 692.202(1), .203(1). The law requires FDACS to adopt rules implementing its provisions regulating agricultural land, *id.* § 692.202(9), and requires DEO to adopt rules implementing the provisions of the law regulating real property on or within ten miles of any military installation or critical infrastructure facility, *id.* § 692.202(10).

41. Exceptions to Florida's New Alien Land Law are limited.

42. Although "foreign principals" may continue to own property subject to the law's restrictions if they acquired it before July 1, 2023, they are prohibited from purchasing any additional agricultural land or real property within ten miles of a military installation or critical infrastructure facility. *Id.* §§ 692.202(2), .203(2).

43. Further, "foreign principals" who owned such property before July 1,

2023, must register their properties. Agricultural property holdings must be registered with FDACS, *id.* § 692.202(3)(a), and real property on or within ten miles of any military installation or critical infrastructure facility must be registered with DEO, *id.* § 692.203(3)(a). Failure to file a timely registration is subject to a civil penalty of $1,000 for each day the registration is late and may result in a lien being placed on the real property for unpaid penalties. *Id.* §§ 692.202(3)(b), .203(3)(b).

44. Under Florida's New Alien Land Law, if a "foreign principal" acquires agricultural land or real property within ten miles of a military installation or critical infrastructure facility on or after July 1, 2023, by devise or descent, through the enforcement of security interests, or through the collection of debts, the "foreign principal" must sell, transfer, or otherwise divest itself of such land within three years after acquiring the property. *Id.* §§ 692.202(4), .203(5).

45. Beyond this, the new law contains only a narrow exception allowing a "foreign principal" who is a natural person with a valid non-tourist visa or who has been granted asylum to purchase one residential real property—and *only if* the property is less than two acres and is not within five miles of a military installation. *Id.* § 692.203(4). There is no exception for purchases of agricultural land.

46. "Foreign principals" owning or acquiring property in violation of the foregoing prohibitions are subject to civil forfeiture of their property. *Id.* §§ 692.202(6)(a), .203(7)(a). Under the new law, FDACS is the state agency

authorized to initiate a civil action for the forfeiture of agricultural land, *id.* § 692.202(6)(b), and DEO is authorized to initiate a civil action for the forfeiture of real property on or within ten miles of any military installation or critical infrastructure facility, *id.* § 692.203(7)(b).

47. The law also creates criminal penalties for "foreign principals" who purchase or acquire agricultural land or real property on or within ten miles of any military installation or critical infrastructure facility in violation of the foregoing prohibitions. Such a violation constitutes a second-degree misdemeanor. *Id.* §§ 692.202(7), .203(8).

48. Likewise, a person who knowingly sells these prohibited kinds of real property or interests therein to "foreign principals" in violation of the new prohibitions commits a second-degree misdemeanor. *Id.* §§ 692.202(8), .203(9).

49. Second-degree misdemeanors are punishable by up to 60 days' imprisonment and a fine of $500. *Id.* §§ 775.082(4)(b), .083(1)(e).

50. Finally, the law also imposes new requirements on *all* buyers within the state. At the time of purchase, buyers of agricultural land or real property on or within ten miles of any military installation of critical infrastructure facility are now required to provide an affidavit signed under penalty of perjury attesting, *inter alia*, that the buyer is not a "foreign principal" from a prohibited "foreign country of concern." *Id.* §§ 692.202(5)(a), .203(6)(a). The law delegates the responsibility for

adopting rules to implement this provision to FREC, including rules establishing the form for the affidavit. *Id.* §§ 692.202(5)(c), .203(6)(c).

ii. Provisions Targeting Chinese Persons Based on Their Race, Ethnicity, Color, Alienage, and National Origin

51. While sections 692.202 and 692.203 prohibit persons from multiple countries, including China, from owning and acquiring certain lands, section 692.204 singles out people from China and imposes even more restrictive limitations on their ownership and acquisition of real property in Florida. Glaringly, section 692.204 also imposes significantly harsher criminal punishments than do 692.202 and 692.203.

52. The central feature of the new law is that it broadly prohibits Chinese persons from purchasing or acquiring *any* real property, or interests in real property, within Florida based on their race, ethnicity, color, alienage, and national origin. *See* Fla. Stat. §§ 692.201(6) (defining real property as "land, buildings, fixtures, and all other improvements to land"), .204(1)(a) (imposing a categorical prohibition regarding "real property in this state").

53. In addition, section 692.204 imposes harsh criminal sanctions on Chinese people who purchase properties in violations of the law—sanctions that are much harsher than those imposed on violators of sections 692.202 and 692.203.

54. The prohibition applies to any "[a]ny person who is domiciled in the People's Republic of China and who is not a citizen or lawful permanent resident of

the United States." *Id.* § 692.204(1)(a)(4). Under the new law, DEO is responsible for adopting rules to implement this prohibition. *Id.* § 692.204(10).

55. Like sections 692.202 and 692.203, section 692.204 prohibits these Chinese persons from directly or indirectly owning or having any controlling interest in any real property within the state, "except for a de minimus [*sic*] indirect interest." *Id.* § 692.204(1)(a).

56. Section 692.204's other provisions—those relating to exceptions to the new law, civil forfeiture proceedings, registration requirements, civil penalties, criminal sanctions, and purchaser disclosure requirements—all mirror those of sections 692.202 and 692.203. The only relevant difference is that the criminal penalties for violating section 692.204 are ***much more severe*** than for violating 692.202 and 692.203.

57. Violations of the new law by Chinese persons are third-degree felonies, *id.* § 692.204(8), punishable by up to five years' imprisonment and a fine of up to $5,000, *id.* §§ 775.082(3)(e), .083(1)(c).

58. The sale of real property to a Chinese person in violation of the new law constitutes a first-degree misdemeanor, *id.* § 692.204(9), punishable by up to one year imprisonment and a fine of $1,000, *id.* §§ 775.082(4)(a), .083(1)(d).

C. The Impact of Florida's New Alien Land Law and the Harm It Is Causing Chinese People in Florida

59. Plaintiffs in this action are people living in Florida and a Florida-based

real estate company who are currently suffering, or imminently will suffer, the direct impact of Florida's New Alien Land Law.

60. As detailed below, the individual plaintiffs in this case lawfully reside in Florida but may be considered domiciled in China due to their nonimmigrant visa status under U.S. immigration law.

61. The term "domicile" is not defined in Florida's New Alien Land Law, but the term typically refers to a person's true, principal, and permanent home. The nature of a nonimmigrant visa, however, is a temporary one and not intended to be a mechanism by which a foreign citizen establishes permanent residency in the United States.[8]

62. Thus, Plaintiffs, by virtue of having nonimmigrant visas, cannot be said to have established permanent residency in the United States, and therefore it is substantially likely that the State of Florida will deem them to be domiciled in their country of origin, China.

63. Plaintiff Yifan Shen is neither a citizen nor a permanent resident of the United States but has permission to stay and live in the United States as the holder

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[8] The U.S. Department of Homeland Security states: "A nonimmigrant visa (NIV) is issued to a person with permanent residence outside the United States but wishes to be in the United States on a temporary basis for tourism, medical treatment, business, temporary work, or study, as examples." U.S. Customs and Border Protection, *What is the Difference Between an Immigrant Visa vs. Nonimmigrant Visa?*, https://help.cbp.gov/s/article/Article-72 (last accessed May 22, 2023).

of a valid H-1B visa, which is a nonimmigrant worker visa. Ms. Shen has lived in the United States for seven years and has lived in Florida for the past four years. She is not a member of the Chinese government or of the Chinese Communist Party. She has a master's degree in science and is working as a registered dietitian in Florida.

64. In April 2023, Ms. Shen signed a contract to buy a single-family home in Orlando to serve as her primary residence. The property, which is a new construction, appears to be located within ten miles of a critical infrastructure facility. Based on searches on Google Maps, the home also appears to be within five miles of multiple military sites, including one identified as "Orange County U.S. Army Recruiting Center Orlando" / "DEERS (Army Facility)," and one identified as "Florida Army National Guard (Army Facility)"; however, because Ms. Shen does not know the acreage of these sites, whether they qualify as a base, camp, post, yard, or center, and whether they are operated under the jurisdiction of the Department of Defense or its affiliates, it is extremely difficult to know whether they qualify as "military installations" under Florida's New Alien Land Law.

65. The estimated closing date for Ms. Shen's new property is in December 2023. Given the severe criminal and civil penalties for violating Florida's New Alien Land Law, given that her closing date is after July 1, 2023, and given the uncertainty about whether her new property is within five miles of multiple "military installations" under the law's vague definitions, she will be forced to cancel the

contract for the purchase and construction of her new home. Fla Stat. §§ 692.203(1), .204(1). Ms. Shen stands to lose all or part of her $25,000 deposit upon cancelling her contract if the law goes into effect.

66. If the law goes into effect and Ms. Shen cancels her contract, she is at substantial risk of being discriminated against by sellers and real estate agents in her future search for real estate because of the penalties imposed by the law and because Ms. Shen is Chinese. Ms. Shen's future search for real estate will be more costly, time-consuming, and burdensome under the new law because she is Chinese.

67. Even if, under Florida's New Alien Land Law, Ms. Shen is eventually able to purchase a property in Florida, she will have to register that property with the DEO. Fla. Stat. § 692.204(4). This registration requirement is burdensome, discriminatory, and stigmatizing to her.

68. Plaintiff Zhiming Xu is neither a citizen nor a permanent resident of the United States but has temporary permission to stay and live in the United States as a political asylee. Prior to coming to the United States, Mr. Xu was persecuted by the Chinese government and had to flee to the United States. Mr. Xu entered the United States on a tourist visa, and he has applied for political asylum. He is awaiting a decision. He is not a member of the Chinese government or of the Chinese Communist Party. He has a bachelor's degree and is managing and repairing short-term rental properties in Florida. Mr. Xu has lived in the United States and Florida

for the past four years. Mr. Xu already owns a residential property in Florida.

69. In early 2023, Mr. Xu signed a contract to buy a second residential property near Orlando. The property appears to be located within ten miles of a critical infrastructure facility. The estimated closing date for Mr. Xu's property is in September 2023. Because Mr. Xu's closing date is after July 1, 2023, and because Mr. Xu already owns property in Florida, Florida's New Alien Land Law will prevent Mr. Xu from acquiring his new home—specifically, by forcing him to cancel the contract for the purchase of his new property. Fla Stat. §§ 692.203(1), .204(1), .204(3). Mr. Xu stands to lose all or part of his $31,250 deposit if the law goes into effect and he is forced to cancel the real estate contract.

70. Florida's New Alien Land Law will also require Mr. Xu to register the property he already owns with the DEO. Fla. Stat. § 692.204(4). This registration requirement is burdensome, discriminatory, and stigmatizing to him.

71. Plaintiff Xinxi Wang is neither a citizen nor a permanent resident of the United States but has permission to stay and live in the United States as the holder of a valid F-1 visa, which is a nonimmigrant visa for international students. Ms. Wang has lived in the United States and in Florida for the past five years. She is not a member of the Chinese government or of the Chinese Communist Party. She is currently pursuing her Ph.D. degree in earth systems science at a Florida university. Ms. Wang owns a home in Miami, which is her primary residence. As an owner of

real property in Florida, Ms. Wang will be required to register her property with DEO under Florida's New Alien Land Law. Fla. Stat. § 692.204(4). In addition, because Ms. Wang's property appears to be located within ten miles of a critical infrastructure facility, Ms. Wang is further subject to the law's registration requirement. *Id.* § 692.203(3). This registration requirement is burdensome, discriminatory, and stigmatizing to Ms. Wang.

72. Plaintiff Yongxin Liu is neither a citizen nor a permanent resident of the United States but has permission to stay and live in the United States as the holder of a valid H-1B visa, which is a nonimmigrant worker visa. Mr. Liu has lived in the United States for five years and in Florida for four years. He is not a member of the Chinese government or of the Chinese Communist Party. He is an assistant professor at a Florida university in the field of data science. He owns a property close to Daytona Beach, which is his primary residence. As an owner of real property in Florida, Mr. Liu will be required under Florida's New Alien Land Law to register his property with DEO. Fla. Stat. § 692.204(4). In addition, because Mr. Liu's property appears to be located within ten miles of a critical infrastructure facility, Mr. Liu is further subject to the law's registration requirement. *Id.* § 692.203(3). This registration requirement is burdensome, discriminatory, and stigmatizing to Mr. Liu.

73. Mr. Liu also has plans to purchase a second property in the vicinity of Pelican Bay, Florida, for his and his parents' use as a vacation home. However, Mr.

Liu will be prohibited from purchasing a second property under the new law. *Id.* § 692.204(1), (3). Furthermore, there is a substantial likelihood that the second property would be within ten miles of a military installation or critical infrastructure facility, resulting in an additional prohibition on the purchase under the new law. *Id.* § 692.203(1), (2).

74. Due to Florida's New Alien Land Law, Mr. Liu reasonably fears that if he sells his current property and seeks to purchase another home, real estate agents will refuse to represent him because he is Chinese, that he will be disadvantaged when bidding on property because he is Chinese, and that his search for real estate will be more costly, time-consuming, and burdensome as a result. *See id.* §§ 692.203(8), .204(9).

75. Plaintiff Multi-Choice Realty, LLC is a real estate brokerage firm that primarily serves Chinese-speaking clients in the United States, China, and Canada. Multi-Choice Realty is not owned or controlled by the Chinese government or the Chinese Communist Party. In 2022, Multi-Choice Realty was involved in 74 property acquisitions, the vast majority of which were for clients who were Chinese or Chinese Americans. Many of Multi-Choice Realty's existing customers and potential customers will be directly impacted by Florida's New Alien Land Law by being required to register their properties and by being prohibited from acquiring new properties. As a result, Multi-Choice Realty stands to lose about one-quarter of

its business due to Florida's New Alien Land Law, which targets Multi-Choice Realty's customer base and prohibits much of its clientele from engaging in further real estate purchases with Multi-Choice Realty.

76. The swathes of land now off-limits to Chinese persons under Florida's New Alien Land Law are extensive, due to the law's blanket prohibition and the narrowness of its exception for certain homestead purchases that are not within five miles of a "military installation"—a broadly and vaguely defined term. The law will have the net effect of creating "Chinese exclusion zones" that will cover immense portions of Florida, including many of the state's most densely populated and developed areas.

77. As a result of Florida's New Alien Land Law, there is a substantial likelihood that sellers of real estate will discriminate against Plaintiffs and other people of Chinese descent even for transactions that are permitted, as sellers will seek to broadly avoid Chinese buyers given the criminal penalties imposed for selling property in violation of the new law.

78. Finally, Florida's New Alien Land Law is having and will have far-reaching stigmatizing effects among people of Chinese and Asian descent in Florida, including Plaintiffs, as Florida law deems them a danger to the United States. This impact is exactly what laws like the Chinese Exclusion Act of 1882 and the California Alien Land Law of 1913 did more than a hundred years ago.

D. The Federal Government's Role in Foreign Affairs, Foreign Investment, and National Security

79. The federal government manages foreign affairs, foreign investment, and national security in the United States, including through two federal regimes: (i) the Committee on Foreign Investment in the United States ("CFIUS"), which has been empowered to review foreign investment transactions, and (ii) the Office of Foreign Assets Control ("OFAC") within the U.S. Treasury Department, which administers and enforces economic regulations and trade sanctions.

i. History of CFUIS

80. CFIUS was established on May 7, 1975, by President Ford through an executive order. E.O. 11858, 40 F.R. 20263. Upon its establishment, CFUIS became the interagency body of the federal executive branch responsible for overseeing issues of national security with respect to direct foreign investment, including real estate transactions. CFUIS was directed to, *inter alia*, monitor trends and developments in foreign investment in the United States, prepare guidance for foreign governments and consult regarding prospective major foreign governmental investments in the United States, review foreign investments that could have major implications for the national security interests of the United States, and consider proposals for new legislation or regulations relating to foreign investment as necessary.

81. Later, Congress enacted the Exon-Florio amendment to the Defense

Production Act, included in the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 5021, 102 Stat. 1107, 1425–26. It established a mechanism for the federal executive branch to engage in a retrospective review of foreign investments. On December 27, 1988, President Reagan then delegated that power to CFIUS by executive order, empowering it to conduct reviews, undertake investigations, and make recommendations with respect to foreign investment data and policies. E.O. 12661, 54 F.R. 779. By 1991, the Department of the Treasury promulgated federal regulations implementing the Exon-Florio amendment, which were codified at 31 C.F.R. Part 800.

82. The next year, Congress amended the Exon-Florio provision with the Byrd Amendment to the National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484, § 837, 106 Stat. 2315, 2463–65 (1992). The Byrd Amendment broadened CFIUS's duties to investigate certain foreign investments, in particular, those in which the acquirer was controlled or acting on behalf of a foreign government, and those in which the acquisition would result in the control of a person engaged in interstate commerce within the United States that could affect national security.

83. Eventually, Congress passed, and President Bush signed, the Foreign Investment and National Security Act of 2007 ("FINSA"), Pub. L. No. 110-49, 121 Stat. 246, giving Congress further oversight of CFIUS. FINSA also expanded the

national security prerogatives within CFIUS's purview and required CFIUS to engage in even greater scrutiny of foreign direct investments. It also concretized CFIUS's position as a permanent federal agency by codifying it and granting it statutory authority, including certifying to Congress that a transaction that had been reviewed had no unresolved national security issues and providing Congress with confidential briefings, as well as annual classified and unclassified reports.

84. Most recently, Congress passed the Foreign Investment Risk Review Modernization Act of 2018 ("FIRRMA"), Pub. L. No. 115-232, §§ 1701–28, 132 Stat. 2174–2207, which President Trump signed into law. The impetus for FIRRMA was the concern by many members of Congress over Chinese companies' growing investment in the United States. In response, Congress significantly expanded CFIUS's authority to investigate and review foreign investments. Most notably, CFIUS was granted jurisdiction to review certain real estate transactions by foreign persons, specifically, those in close proximity to a military installation, or to a U.S. government facility or property sensitive to national security. Congress also empowered CFIUS to review changes in foreign investor rights regarding U.S. businesses, as well as transactions in which a foreign government has a direct or indirect substantial interest. FIRRMA further authorized CFIUS to designate some countries as "countries of special concern" based on CFIUS's assessment as to whether that country has demonstrated or declared a strategic goal of acquiring a

type of critical technology or critical infrastructure that would affect U.S. national security interests. In that regard, FIRRMA also formalized CFUIS's use of risk-based assessments to determine whether certain transactions pose threats to national security.

85. At the same time, Congress took several deliberate measures to calibrate the regulation of real estate purchases. For example, Congress specifically constrained the President's power to prohibit transactions by exempting those involving only "a single 'housing unit'"—a house, an apartment, etc. 50 U.S.C. § 4565(a)(4)(C)(i); *see* 31 C.F.R. §§ 802.223 (defining term), 802.216 (includes "adjacent land" incidental to use as housing unit). That express statutory exception reflects the marginal national security implications of such transactions and the outsized economic, personal, and foreign policy implications of policing the purchases of foreign nationals' homes. In addition, the federal process is individualized, with the government reviewing *particular* transactions and purchasers to assess whether they pose any national security threat. *See* 50 U.S.C. § 4565(d)(4). And penalties for violations of the rules are carefully calibrated. Criminal liability attaches only where a person has made false statements to CFIUS. 31 C.F.R. § 802.901(a)–(c), (g).

ii. History of OFAC

86. In addition to the CFIUS regime, the U.S. Treasury Department,

through OFAC, is heavily involved with administering and enforcing economic and trade sanctions in support of U.S. national security and foreign policy objectives, including those authorized by Congress and the President pursuant to the International Emergency Economic Powers Act of 1977 ("IEEPA"), Pub. L. No. 95-223, §§ 201–08, 91 Stat. 1625, 1626–29. The Division of Foreign Assets Control, OFAC's immediate predecessor, was established under the Treasury Department in 1950. OFAC derives its authority from a variety of federal laws regarding economic sanctions and embargoes, particularly IEEPA.

87. One of OFAC's primary duties is to prevent "prohibited transactions," which it defines as "trade or financial transactions and other dealings in which U.S. persons may not engage unless authorized by OFAC or expressly exempted by statute." OFAC administers and enforces economic sanctions programs against countries, businesses, and groups of individuals, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals. It maintains and regularly updates several sanction lists identifying countries, entities, and individuals considered to be threats to national security.

88. In sum, the federal government—through statutes, executive orders, executive agencies, and inherent powers—occupies the fields of foreign affairs, foreign investment, national security, and the intersection thereof, and Florida's New Alien Land Law conflicts with the deliberate, delicate balance that the federal

government has struck with respect to these matters.

COUNT ONE

Violation of the Right to Equal Protection Under the 14th Amendment and 42 U.S.C. § 1983 (By All Individual Plaintiffs Against All Defendants)

89. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 78 as though fully set forth herein.

90. The Equal Protection Clause of the 14th Amendment to the U.S. Constitution provides that: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

91. The Equal Protection Clause protects all persons in the United States, regardless of their race, ethnicity, color, alienage, or national origin, including Plaintiffs.

92. The Equal Protection Clause prohibits the States from denying any person equal protection of the laws based on the person's race, ethnicity, color, alienage, or national origin. This includes laws that appear neutral on their face but are motivated by discriminatory intent and result in discriminatory practices or disparate treatment due to race, ethnicity, color, alienage, or national origin.

93. The new prohibitions on landownership target Plaintiffs, who are Chinese persons. As described above, the State of Florida appears to classify Plaintiffs as "foreign principals" from "foreign countries of concern" pursuant to

section 692.201. As such, Plaintiffs are subject to the prohibitions of section 692.202 relating to agricultural lands and section 692.203 relating to real property on or within ten miles of a military installation or critical infrastructure facility.

94. Similarly, the State of Florida appears to classify Plaintiffs as prohibited "persons" pursuant to section 692.204. As such, Plaintiffs are subject to the prohibitions of section 692.204 relating to all real property and interests therein.

95. The classifications, prohibitions, penalties, and requirements that Plaintiffs are subject to under Florida's New Alien Land Law are based on Plaintiffs' race, ethnicity, color, alienage, and national origin.

96. Florida's New Alien Land Law violates the Equal Protection Clause on the following grounds:

a. The law was enacted with the purpose and intent to discriminate against persons based on race, ethnicity, color, alienage, and national origin, in particular, Chinese persons.

b. The law makes impermissible classifications based on race, ethnicity, color, alienage, and national origin that are not justified by a compelling state interest.

c. The law is not narrowly tailored to meet a compelling state interest.

d. The law invidiously targets persons based on their race, ethnicity, color, alienage, and national origin, particularly Chinese persons, resulting in

discriminatory practices and disparate treatment.

e. The law deprives Chinese persons from equal protection of the laws, including laws relating to their fundamental rights.

97. The enactment and imminent enforcement of the new prohibitions on landownership embodied by Florida's New Alien Land Law have caused and will continue to cause ongoing and irreparable harm to Plaintiffs. Plaintiffs have and will continue to be discriminated against and subject to disparate treatment based on their race, ethnicity, color, alienage, and national origin simply because they are Chinese persons within the meaning of the new law.

98. In implementing and enforcing the provisions of the law, Defendants are acting under color of state law to deprive Plaintiffs and other individuals of their rights, privileges and immunities granted under the U.S. Constitution and federal law.

COUNT TWO

Violation of the Right to Procedural Due Process Under the 14th Amendment and 42 U.S.C. § 1983 (By All Individual Plaintiffs Against All Defendants)

99. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 78 as though fully set forth herein.

100. The Due Process Clause of the 14th Amendment provides: "No State shall . . . deprive any person of life, liberty, or property, without due process of

law[.]"

101. The protections of the Due Process Clause apply to all persons in the United States, regardless of their race, ethnicity, color, alienage, and national origin, including Plaintiffs.

102. The Due Process Clause protects the fundamental rights and liberty interests of all persons in the United States from unreasonable governmental interference through state action, including that which is arbitrary, irrational, oppressive, discriminatory, and egregious. This entails the right to procedural due process, which consists, at a minimum, of fair notice and an opportunity to be heard.

103. The new prohibitions on landownership target the individual Plaintiffs, who are Chinese persons. As described above, the State of Florida appears to classify Plaintiffs as "foreign principals" from "foreign countries of concern" pursuant to section 692.201. As such, Plaintiffs are subject to the prohibitions of section 692.202 relating to agricultural lands and section 692.203 relating to real property on or within ten miles of a military installation or critical infrastructure facility.

104. Similarly, the State of Florida appears to classify Plaintiffs as prohibited "persons" pursuant to section 692.204. As such, Plaintiffs are subject to the prohibitions of section 692.204 relating to real property and interests therein.

105. Florida's New Alien Land Law violates the Due Process Clause under the 14th Amendment to the U.S. Constitution, both on its face and as applied to

Plaintiffs, on the following grounds:

a. The law is impermissibly vague, indefinite, and ambiguous because it fails to clearly define "critical infrastructure facility," "military installation," and "domicile," and therefore fails to provide sufficient notice about which properties and persons are subject to its classifications, prohibitions, penalties, and requirements.

b. The law is impermissibly vague, indefinite, and ambiguous because it fails to provide sufficient notice as to where the ten-mile and five-mile exclusion zones surrounding the covered critical infrastructure facilities and military installations begin and end.

106. The law's vagueness and lack of adequate guidelines authorizes and encourages arbitrary and discriminatory enforcement across the state, including with respect to Plaintiffs.

107. The enactment and enforcement of the new prohibitions on landownership embodied by Florida's New Alien Land Law have caused and will continue to cause ongoing and irreparable harm to Plaintiffs.

108. In implementing and enforcing the provisions of the law, Defendants are acting under color of state law to deprive Plaintiffs and other individuals of their rights, privileges, and immunities granted under the U.S. Constitution and federal law.

COUNT THREE

Violation of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*
(By All Plaintiffs Against All Defendants)

109. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 78 as though fully set forth herein.

110. The Fair Housing Act establishes that "[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing through the United States." 42 U.S.C. § 3601.

111. The Fair Housing Act applies to all "dwellings," which are defined as "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereof of any such building, structure, or portion thereof." *Id.* § 3602(b).

112. The protection of the Fair Housing Act extends to all persons in the United States, including Plaintiffs. Specifically, the Fair Housing Act defines "person" as including "one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, receivers, and fiduciaries." *Id.* § 3602(d).

113. The Fair Housing Act empowers any person who is aggrieved under the law to make a claim. *Id.* § 3613(a). The definition of "aggrieved person" includes

any person who either "claims to have been injured by a discriminatory housing practice[,] or believes that such person will be injured by a discriminatory housing practice that is about to occur." *Id.* § 3602(i).

114. Under the Fair Housing Act, 42 U.S.C. § 3604, it is an unlawful discriminatory housing practice:

> (a) To refuse to sell . . . after the making of a bona fide offer, or to refuse to negotiate for the sale . . . of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, . . . or national origin.
>
> (b) To discriminate against any person in the terms, conditions, or privileges of sale . . . of a dwelling, or in the provision of services of facilities in connection therewith, because of race, color, . . . or national origin.
>
> (c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale . . . of a dwelling that indicates any preference, limitation, or discrimination based on race, color, . . . or national origin, or an intention to make any such preference, limitation, or discrimination.
>
> (d) To represent to any person because of race, color, . . . or national origin that any dwelling is not available for . . . sale . . . when such dwelling is in fact so available.
>
> (e) For profit, to induce or attempt to induce any person to sell . . . any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, . . . or national origin.

115. The Fair Housing Act also makes it "unlawful for any person . . . whose business includes engaging in residential real estate-related transactions to

discriminate against any person in making available such a transaction, or in the terms of conditions of such a transaction, because of race, color, . . . or national origin." *Id.* § 3605(a). This provision relating to "residential real estate-related transaction[s]" includes "[t]he making or purchasing of loans or providing other financial assistance . . . [and] [t]he selling, brokering, or appraising of residential real property."

116. The new prohibitions on landownership target the individual Plaintiffs, who are Chinese persons. As described above, the State of Florida appears to classify Plaintiffs as "foreign principals" from "foreign countries of concern" pursuant to section 692.201. As such, Plaintiffs are subject to the prohibitions of section 692.202 relating to agricultural lands and section 692.203 relating to real property on or within ten miles of a military installation or critical infrastructure facility.

117. Similarly, the State of Florida appears to classify Plaintiffs as prohibited "persons" pursuant to section 692.204. As such, Plaintiffs are subject to the prohibitions of section 692.204 relating to real property and interests therein.

118. The classifications, prohibitions, penalties, and requirements that Plaintiffs are subject to under Florida's New Alien Land Law are based on Plaintiffs' race, color, and national origin.

119. Due to Florida's New Alien Land Law, Plaintiff Multi-Choice Realty is and will be unable to facilitate real estate transactions that would close after July 1,

2023, and that are barred by the law's discriminatory classifications, prohibitions, and penalties.

120. Florida's New Alien Land Law violates the Fair Housing Act on the following grounds:

a. The law establishes a discriminatory housing practice that purports to require or permit action that would violate the Fair Housing Act, and therefore, is presumptively invalid as a matter of law.

b. The law discriminates against persons based on their race, color, and national origin, particularly Chinese persons, with respect to dwellings and residential real estate-related transactions.

c. The law invidiously targets persons based on their race, color, and national origin, particularly Chinese persons, resulting in discriminatory practices and disparate treatment with respect to dwellings and residential real estate-related transactions.

121. The enactment and enforcement of the new prohibitions on landownership in Florida's New Alien Land Law have caused and will continue to cause ongoing and irreparable harm to Plaintiffs. Plaintiffs have and will continue to be discriminated against and subject to disparate treatment based on their race, color, and national origin simply because they are Chinese persons within the meaning of the new law.

COUNT FOUR

**Violation of the Supremacy Clause of the U.S. Constitution
Preemption by Federal Regimes Governing
Foreign Affairs, Foreign Investment, and National Security
(By All Plaintiffs Against All Defendants)**

122. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 88 as though fully set forth herein.

123. The Supremacy Clause of the U.S. Constitution states: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the Contrary notwithstanding." U.S. Const., Art. VI, Para. 2.

124. The Supremacy Clause establishes the doctrine of federal preemption, which mandates that federal law preempts state law in any area over which Congress has expressly or impliedly reserved exclusive authority or which is constitutionally reserved to the federal government, or where state law conflicts or interferes with federal law or objectives.

125. Pursuant to the Supremacy Clause, Florida's New Alien Land Law is preempted by federal regimes governing foreign affairs, foreign investment, and national security, including CFIUS and OFAC within the U.S. Treasury Department. Under federal law, CFIUS is authorized, *inter alia*, to review foreign investment

transactions with respect to national security concerns, as well as to review real estate transactions by foreign persons, specifically, those pertaining to properties in close proximity to military installations, U.S. government facilities, or properties of national security sensitivity. OFAC is responsible for administering and enforcing economic regulations.

126. It is unquestionable that foreign relations, the power to deal with national security threats posed by foreign countries, and foreign commerce are the exclusive powers of the federal government. Indeed, the U.S. Constitution vests the federal government the primary powers to manage foreign affairs and to regulate foreign commerce. *See, e.g.*, U.S. Const., Art. I, Sec. 10, Cl. 1, 3 (foreign affairs); U.S. Const., Art. I, Sec. 8, Cl. 3 (commerce with foreign nations).

127. The federal government has long occupied the fields of foreign affairs, foreign investment, national security, and the intersection thereof, especially with respect to foreign relations with China.

128. All in all, given the comprehensiveness of federal schemes and the creation of multiple federal agencies to administer the schemes, federal law has "occupied" the entire field, thus precluding any state regulation.

129. The State of Florida explicitly stated its intent to regulate in these areas of foreign affairs and foreign investment, as they bear on national security, when enacting Florida's New Alien Land Law. The governor and legislators have

repeatedly emphasized the need to take action "to stand against the United States' greatest geopolitical threat—the Chinese Communist Party."[9] Accordingly, the law violates the Supremacy Clause because it regulates a field exclusively occupied by the federal government, specifically, the intersection between foreign affairs, national security, and foreign investment, including foreign real estate acquisitions. In so doing, the new landownership prohibitions usurp the power vested by the Constitution and by Congress in the federal government to investigate, review, and take actions with respect to foreign investments, including real estate transactions, that raise issues of national security.

130. In addition, the new landownership prohibitions intrude upon the federal government's power to govern foreign affairs, generally. By characterizing several countries as "foreign countries of concern," and by expressly singling out Chinese people, Florida's New Alien Land Law unconstitutionally seeks to establish its own foreign policy, thereby intruding upon the federal government's exclusive power to govern foreign affairs. *See, e.g.*, *Zschering v. Miller*, 389 U.S. 429 (1968).

131. The new landownership prohibitions also intrude upon the federal government's power to govern foreign commerce, generally. By prohibiting "foreign principals" from specific "foreign countries of concern" from owning and acquiring

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[9] Press Release, *Governor Ron DeSantis Cracks Down on Communist China* (May 8, 2023), https://www.flgov.com/2023/05/08/governor-ron-desantis-cracks-down-on-communist-china/.

land in Florida, the law discriminates against out-of-state individuals and entities based on race, ethnicity, color, alienage, and national origin, in particular, Chinese persons. The new law therefore unduly burdens international commerce, especially with respect to foreign investment.

132. Florida's New Alien Land Law conflicts with the deliberate, delicate balance that the federal government has struck with respect to these matters, and accordingly, the statute is preempted by federal law.

133. The enactment and pending enforcement of the new prohibitions on landownership embodied by Florida's New Alien Land Law have caused and will continue to cause Plaintiffs ongoing and irreparable harm.

134. In implementing and enforcing the provisions of the law, Defendants are acting under color of state law to deprive Plaintiffs and other individuals of their rights, privileges, and immunities granted under the U.S. Constitution and federal law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the Court enter judgment in their favor and:

A. Declare Florida's New Alien Land Law unconstitutional under the 14th Amendment to the U.S. Constitution because it violates Plaintiffs' rights to equal protection.

B. Declare Florida's New Alien Land Law unconstitutional under the 14th Amendment to the U.S. Constitution, both on its face and as applied, because it violates the rights of Plaintiffs and others to procedural due process.

C. Declare that Florida's New Alien Land Law violates Plaintiffs' rights under the Fair Housing Act, 42 U.S.C. § 3601 *et seq*.

D. Declare Florida's New Alien Land Law unconstitutional under the Supremacy Clause of the U.S. Constitution and preempted by federal law.

E. Preliminarily and permanently enjoin Defendants from implementing and enforcing Florida's New Alien Land Law against Plaintiffs.

F. Order Defendants to expunge any and all records concerning Plaintiffs, including affidavits and registrations, that Defendants acquire pursuant to Florida's New Alien Land Law.

G. Award Plaintiffs reasonable attorneys' fees and their costs of suit.

H. Grant any other relief this Court deems just and proper.

Respectfully submitted this 5th day of June, 2023,

/s/ Nicholas L.V. Warren

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* *Admitted pro hac vice*

** *Motion for leave to appear pro hac vice pending*

† *Motion for leave to appear pro hac vice forthcoming*

Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

YIFAN SHEN, an individual, ZHIMING XU, an individual, XINXI WANG, an individual, YONGXIN LIU, an individual, and MULTI-CHOICE REALTY LLC, a limited liability corporation,

Plaintiffs,

v.

ASHLEY MOODY, in her official capacity as Attorney General of the State of Florida, WILTON SIMPSON, in his official capacity as Commissioner of Agriculture for the Florida Department of Agriculture and Consumer Affairs, MEREDITH IVEY, in her official capacity as Acting Secretary of the Florida Department of Economic Opportunity, PATRICIA FITZGERALD, in her official capacity as Chair of the Florida Real Estate Commission, R.J. LARIZZA, in his official capacity as State Attorney for the 7th Judicial Circuit, MONIQUE WORRELL, in her official capacity as State Attorney for the 9th Judicial Circuit, KATHERINE RUNDLE, in her official capacity as State Attorney for the 11th Judicial Circuit,

Defendants.

Case No. 4:23-cv-208-AW-MAF

DECLARATION OF YIFAN SHEN

I, Yifan Shen, hereby declare as follows:

1. I am a plaintiff in the above-captioned action, and I make this declaration in support of Plaintiffs' Motion for Preliminary Injunction, filed concurrently herewith. I have personal knowledge of the facts stated in this declaration, and if called to testify in this matter, I could and would competently testify to the facts contained herein.

A. Personal Background

2. I am a 28-year-old woman of Asian descent and Chinese ethnicity.

3. I am a native-born citizen of the People's Republic of China.

4. I am neither a member of the Chinese government nor a member of the Chinese Communist Party.

5. I have lived in the United States since 2016.

6. I am neither a United States citizen nor a permanent resident of the United States.

7. I currently have permission to stay and live in the United States as a holder of a valid H-1B visa, which is a nonimmigrant worker visa.

8. I have not yet applied for permanent residency status in the United States, but my employer has begun the process of permanent labor certification and I plan to apply for permanent residency in the United States.

9. I have lived in Florida since 2019. Except for some recreational travel, I have continuously lived in Florida for the past four years.

10. I have a master's degree in science, and I am a dietitian, duly registered by the Florida Commission on Dietetic Registration. One of the joys of being a registered dietitian is that my work allows me to do my part to help keep the next generation of Floridians healthy. In particular, my work focuses on providing nutritional support and care to the pediatric population in Florida.

B. Property Interests in Florida

11. I am a renter who has lived at my current residence in Orlando, Florida for about two and a half years. My current lease ends in January 2024.

12. In April 2023, I signed a contract to buy a single-family home in Orlando, Florida, which I intend to be my primary residence. A true copy of the contract with private information redacted is attached as Exhibit 1.

13. The property is a new home construction and is currently in the process of being built. The nearest intersection is Heather Road and N. Forsyth Road, Orlando.

14. The estimated closing date for my new property is December 2023.

15. I have placed a deposit on the purchase and construction of my new property in the amount of $25,000.

16. I intend to move into my new property as soon as possible after the estimated closing date of December 2023, especially considering that my current lease ends in January 2024.

C. Irreparable Harm Caused by Florida's New Alien Land Law

17. I am aware that Senate Bill 264 (hereinafter, "Florida's New Alien Land Law") was recently passed in Florida and signed into law on May 8, 2023, which is the subject of this lawsuit. I learned about the new law from people I know, as well as from news and media reports. I have read the new law, read articles about it, and discussed it with others to try to understand what it means.

18. The home I am in contract to purchase is located in an area called Azalea Park in eastern Orlando. Based on searches on Google Maps, the home appears to be within five miles of multiple military sites, including one identified as "Orange County U.S. Army Recruiting Center Orlando" / "DEERS (Army Facility)" and one identified as "Florida Army National Guard (Army Facility)." Because I do not know the acreage of these sites, whether each qualifies as a base, camp, post, station, yard, or center, and whether they are operated under the

jurisdiction of the Department of Defense or its affiliates, it is extremely difficult to know whether they qualify as "military installations" under Florida's New Alien Land Law.

19. The home I am in contract to purchase also appears to be within ten miles of a critical infrastructure facility.

20. Given the severe criminal and civil penalties for violating Florida's New Alien Land Law, given that my closing date is after July 1, 2023, and given the uncertainty about whether my new property is within five miles of multiple "military installations" under the law's vague definitions, I will be forced to cancel the contract for the purchase and construction of my new home. I stand to lose all or part of my $25,000 deposit upon cancelling my contract.

21. I am extremely distressed at the prospect of not being able to acquire my new home and having no place to go when my lease ends. I am also extremely distressed at the prospect of losing my deposit, which would be a severe financial burden.

22. I am also very worried about my future ability to purchase a home in Florida. Although I am aware of an exception to Florida's New Alien Land Law allowing me to purchase one residential property up to two acres in size and not within five miles of a military installation, the new law is very unclear about the areas where I can safely purchase a home in Florida without risking criminal prosecution. I am very fearful that I could inadvertently purchase a home that violates the law and could be arrested and charged with a felony. If I were convicted, I could face up to five years in prison and a fine of $5,000, plus immigration consequences. On top of that, the property could be forfeited.

23. Relatedly, I am also very worried that I will be discriminated against by sellers and real estate agents in my future search for real estate because of their fear of the risk of violating the law and because I am Chinese. I believe that my search for real estate will be more costly, time-consuming, and burdensome under

the new law because I am Chinese. The new law will cast a cloud of suspicion over me as a Chinese person.

24. With respect to the possible criminal sanctions for violating the law, even inadvertently, I am very worried about the impact that being incarcerated could have on my life. Not only would being incarcerated deprive me of my freedom and basic liberties, but it would interrupt my income, destroy my career, and possibly result in me losing my ability to remain a registered dietitian.

25. Even if, under the new law, I am eventually able to purchase a property in Florida, I will have to register that property with the State. These registration requirements are burdensome, discriminatory, and stigmatizing to me. I am very worried that this registration will be used to target me, discriminate against me, monitor me, and generally harass me as a Chinese homeowner.

26. I feel that as a Chinese person, I have been singled out and targeted by the law simply because of where I came from, my ancestry, and my alienage status. The law stigmatizes me and wrongly treats me as suspicious because I am Chinese.

I declare under penalty of perjury under the laws of the United States and the State of Florida that the foregoing is true and correct.

Executed this _5th___ day of June, 2023.

Yifan Shen

EXHIBIT 1

BLUE DIAMOND
PURCHASE CONTRACT

This Purchase Contract (the "Contract") is made by and between NEW EARTH PROPERTIES LLLP, a Florida Corporation ("SELLER"), whose address is [redacted]Orlando, Florida 32801, and

BUYER 1: YIFAN SHEN

Home Phone: [redacted]	Work Phone:
Email Address: [redacted]@GMAIL.COM	
Mailing Address: [redacted] ORLANDO, FL 32814	

BUYER 2:

Home Phone:	Work Phone:
Email Address:	
Mailing Address:	

ORAL REPRESENTATIONS CANNOT BE RELIED ON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT.

1. **DESCRIPTION OF PROPERTY.** Subject to the terms and conditions of this Contract and for the consideration set forth herein, BUYER hereby agrees to purchase and SELLER hereby agrees to sell and convey to BUYER all of that certain parcel of real property being situated in Orange County, State of Florida, known and designated as **LOT No**. [redacted], (the "LOT") of BLUE DIAMOND, whose **STREET ADDRESS** is ---[redacted] DR, ORLANDO, FL 32807----------, together with all appurtenances thereto, as the same are contained and defined in the plat for BLUE DIAMOND, recorded in the Public Records of Orange County, Florida, Plat book 108, Pages 106-111.

   As part of the consideration for this transaction, SELLER hereby agrees to equip and furnish the Unit with the Standard Features set forth on the attached Exhibit "A." BUYER hereby is notified that the models that will be shown by SELLER may contain equipment and furnishings that may be different from the equipment and furnishings to be placed in the Unit by SELLER under this Contract, and BUYER hereby agrees that the only equipment and furnishings to be placed in the Unit by SELLER are as stated above. The cost of any additional equipment and furnishings shall be borne solely by BUYER.

2. **PURCHASE PRICE AND METHOD OF PAYMENT.** BUYER agrees to pay the Total Purchase Price of $ 484,900 to SELLER as follows:

Purchase Price:

a. Base Purchase Price of Unit	$479,900
b. PLUS: Extra/Options (if any, as listed in Addendum "A")	$ 5,000
c. LESS: Credits (if any)	$
d. TOTAL PURCHASE PRICE	$ 484,900

DS YS

DS MS

Method of Payment:

a.	Initial Cash Deposit made as of the date of this Contract	$ 5,000
b.	LESS: Additional deposit(s) due on or before as set forth below: DUE BY MAY 15TH, 2023	$ 19,245
c.	Balance due at Closing (Subject to adjustments and prorations provided for herein such as closing costs and prepaids.	$ 460,655

3. **FINANCING.** If BUYER elects to obtain mortgage financing, BUYER shall assume responsibility and expense for obtaining such financing. BUYER acknowledges and agrees that this Contract shall not be conditioned on BUYER qualifying for mortgage financing from any lender or on any lender funding at closing. Notwithstanding the foregoing, if BUYER elects to obtain mortgage financing, BUYER hereby agrees to make a loan application within five (5) days from the effective date of this Contract. The failure of BUYER to make a loan application within the above time frame shall constitute a default hereunder and may be actionable by SELLER in accordance with the terms of this Contract, and such default may be cured only on the express written statement by SELLER indicating that the default is deemed to be cured. Loan approval by the lending institution must be issued within thirty (30) days following BUYER's loan application, unless otherwise agreed to in writing by SELLER and BUYER. The failure of BUYER to secure loan approval within the thirty (30) day time frame shall not be grounds for BUYER to avoid BUYER's obligations under this Contract. Loan approval shall mean a loan commitment from an institutional lender.

If BUYER complies with all of the above requirements and is unable to procure a loan commitment within thirty (30) days of the date of application, SELLER shall have the option of refunding BUYER's deposits to BUYER and terminating this Contract, at any point after expiration of said 30 day period.

However, if BUYER fails to comply with any of the above requirements, BUYER will not be entitled to terminate this Contract and this Contract will be deemed a cash sale, or at SELLER's option, SELLER may declare BUYER in default. If BUYER is unable to obtain mortgage approval due to an adverse change in BUYER's personal or financial condition occurring after BUYER first applies for a mortgage, or if the lender withdraws BUYER's approval after approving BUYER, BUYER will not be entitled to terminate this Contract and this will be deemed a cash sale or SELLER may, at its option, terminate this Contract and refund BUYER's deposits to BUYER. If BUYER's approval is subject to any contingencies or conditions of any nature, to include but not limited to, credit updates, proof of funds available, proof of employment and income, insurance or any other requirements to be furnished or performed by the BUYER, or the approval is called preliminary or conditional, in such case, that approval shall constitute the approval required under this Contract, and BUYER shall be fully responsible and required to satisfy all conditions or contingencies to the satisfaction of the lender prior to the closing. In the event BUYER does not satisfy the lender and the lender withdraws such preliminary, conditional or contingent approval, it shall be deemed a default on the part of the BUYER and this transaction shall be deemed a cash sale or, at SELLER's sole option, this Contract may be terminated and the BUYER's deposit refunded.

In addition, any other contingencies, conditions or requirements of BUYER that become effective upon mortgage approval shall be satisfied at the time designated regardless of the conditions or type of approval obtained. If BUYER's loan approval is withdrawn by the lender for any reason, this becomes a cash sale, and BUYER's deposits will be forfeited in the event that BUYER does not close on the transaction.

DS MS

DS MS

The initial deposit of $5000 in paragraph 2a above is payable to the Escrow Agent Title Team, however, after 30 days, this deposit is forwarded to the Seller by Title Team and becomes non- refundable. Buyer acknowledges and consents to this transfer of the initial deposit by signing this contract. The additional deposit is paid directly to the Seller and is Non Refundable upon payment.

4. **SELECTION PERIOD**. BUYER agrees to meet with SELLER's designated representative to complete the selection and all decisions required to be made regarding colors and whether to accept the standard features which are included in the base sales price for the Unit or select and agree to pay any increase in the Purchase Price for any option or upgrades in the Unit. BUYER hereby acknowledges receipt and understanding of the standard features list for this development. The selection process shall be completed within SEVEN (7) days of SELLER's oral or written request that BUYER make such selections ("Selection Period"), unless an extension is agreed to in writing by both parties. BUYER understands that after the Selection Period elapses further selections and changes to prior selections will not be allowed.

5. **CONSTRUCTION**. The temporary or permanent certificate of occupancy from the applicable governmental authority shall be final with respect to completion and compliance. The estimated date of completion of construction of the Unit is 12-28-23. SELLER agrees that it will use its best efforts to complete construction by said date. BUYER acknowledges and agrees that said completion date is not guaranteed and is not the essence of this Contract. Under no circumstances shall SELLER be liable for any damages or inconvenience caused to BUYER because of the failure to complete construction by said date, regardless of the cause for the delay. Notwithstanding anything contained herein to the contrary, SELLER unconditionally agrees to complete the Unit within a period of two (2) years from the date of this Contract. Such two (2) year period, however, may be extended due to acts of God, inability to obtain materials, or any other event constituting an impossibility of performance under Florida law. With respect to SELLER's two-year completion obligation, nothing contained herein shall restrict BUYER's right to seek specific performance or any other remedy if BUYER is entitled to such remedies by operation of law.

Certain items displayed in the models (if one is to be built), and/or outside the models such as decorator items, and any other items displayed for merchandising purposes are not standard construction items and are therefore not included in the Agreement. In the event of any conflict between SELLER's models or marketing materials and the plans and specifications for the Unit, the plans and specifications shall control. Identification of such items should be obtained from SELLER's sales representatives.

The Unit may be constructed as a reverse ("mirror image") of that illustrated in the floor plan of the applicable model as shown on sales and promotional material of the SELLER or as shown on an existing model of the Unit. BUYER agrees to accept the Unit as sited by SELLER and as constructed according to a standard or reverse floor plan.

SELLER reserves the right to make minor architectural, structural, or design modifications or changes in the Unit as it deems necessary or desirable, and BUYER agrees to close on the purchase of the Unit notwithstanding such modifications and changes, as long as the modifications and changes do not alter the overall integrity of the Unit and any changes are such that the materials are at least of equal quality. The square footage numbers advertised in sales materials are approximate and may vary. SELLER may have to install chases for mechanical equipment or other reasons that may not appear in marketing or building plans. Location of chases may vary and it will be at the option of the SELLER.

In the event the Unit purchased herein has been constructed as of the date of this Contract, then BUYER acknowledges that BUYER has inspected the Unit and approves and accepts the Unit, as it now exists.

The Purchaser of a one or two story residential unit has the right to have all deposit funds (up to ten (10) percent of the purchase price) deposited in an interest-bearing escrow account. The Purchaser may waive this right in writing. The interest if any, accrued on said escrow account shall be paid to SELLER at closing, unless previously disbursed in accordance with the provision of Florida Statutes at section 501.1375. Deposit(s) made by BUYER hereunder shall be held in a non-interest bearing account. If BUYER terminates this Contract

without defaulting, SELLER shall refund all deposits. If BUYER defaults, SELLER shall be entitled to retain all deposits. BUYER will be required to authorize disbursement of any escrowed funds by the Escrow Agent to SELLER at closing. Title Team shall act as an escrow agent. The escrow agent is located at 300 S Orange Ave, suite 1000, Orlando, FL 32801. PH: 407-591-3726. BUYER, by signing this contract, waves his/her right to have the deposit placed in an interest bearing account and allows the SELLER to use the whole deposit for construction. Once total of 5% deposit is paid by BUYER, the deposit shall become non-refundable.
In the event wood cabinets are installed, BUYER acknowledges that wood grain patterns on various segments of the cabinets may not match. SELLER will not replace cabinets due to color or such variations.

Ceramic Tiles may contain slightly different shades on some individual tiles. BUYER acknowledges and agrees that SELLER will not be obligated to replace individual tiles due to such differences.

6. **TITLE OF BUYER**. At closing, SELLER will transfer title to the Unit to BUYER by Warranty Deed, subject only to the following exceptions:

   a. The provisions of the Declaration of Covenants and all exhibits thereto.

   b. Taxes and assessments for the year of closing and subsequent years.

   c. Restrictions, reservations, conditions, agreements, limitations, and easements of record before closing or imposed by governmental authorities having jurisdiction or control over the subject property; provided, however, none of the foregoing shall prevent the use of the property for residential purposes.

   d. Zoning or building code ordinances, regulations, rights, or interests vested in the United States or the State of Florida.

   e. Matters of survey.

   f. BUYER's mortgage, if any.

   g. Any other items that BUYER has approved through the title insurance commitment approval process as discussed below.

   The foregoing shall be considered to be the "Permitted Exceptions."

   At closing, SELLER will deliver to BUYER a title insurance commitment issued by a title insurance company authorized to do business in the State of Florida, agreeing to issue to BUYER a policy of title insurance for the Unit. BUYER may then examine the same and notify SELLER of any objections to matters of title other than the Permitted Exceptions and matters to be satisfied at closing. If BUYER does not object to any other matters shown on the title insurance commitment, the other matters shall also automatically be considered to be included within the Permitted Exceptions. SELLER shall have 120 days after receiving BUYER's written notice of any objections to title to correct any defects in title that would render title unmarketable, but SELLER is not obligated to do so. If SELLER cannot or elects not to correct the title defects, BUYER shall have two options: (1) BUYER can accept title on the condition offered (with defects) and pay the full purchase price for the Unit and BUYER will not make any claims against SELLER because of the defects; or (2) BUYER can cancel this Contract and receive a full refund of BUYER's deposit(s), in which event SELLER shall be relieved of all obligations under this Contract when SELLER refunds BUYER's deposit(s).

7. **CLOSING**. Based on projected schedules for completion of construction of the Unit, SELLER shall notify BUYER seven (7) days in advance of the scheduled closing date for the purchase of the Unit by BUYER. Funds to be paid at closing shall be in current local funds paid by bank wire transfer. BUYER shall be expected to close on the date indicated in the notice, once the date is established. The notice also shall state the place and time of closing as designated by SELLER. If, after SELLER notifies BUYER of the time and place for closing, BUYER fails to close for any reason at that time and pay the balance of the full purchase price and all other amounts that are owed under this Contract, at SELLER's sole discretion, SELLER may either

   a. Treat BUYER's failure to close as a default, in which case SELLER shall have the rights set forth

in paragraph 10 of this Contract; or

b. Agree to set another date for closing. In such a case, BUYER will be required to pay SELLER at closing $200.00 per day due at closing based on the number of days between the date originally set for closing and the date the closing actually occurs.

8. **WARRANTIES**. Express and implied warranties by SELLER and other warranties are hereby specifically disclaimed. The unit shall be transferred subject only to the implied warranties of fitness and merchantability set forth in Florida Statutes and to a one (1) year builder's warranty. Said warranty shall be available for review at the SELLER's sales office. No other warranties, express or implied, are made.

9. **INSPECTION** . BUYER shall not enter into possession of the Unit or come on the construction site until the transaction has been fully closed except for the purpose of inspection as set forth herein. BUYER's failure to adhere to this provision will constitute default. BUYER will have no right of possession or use of the residence until closing. BUYER will be given an opportunity prior to closing, at a date and time scheduled by SELLER to inspect the residence with an authorized representative of SELLER ("Preclosing Final Walkthrough"). At that time, BUYER agrees to sign an inspection form listing any defect(s) or alleged defect(s) in workmanship or materials BUYER discovers. Any defect(s) or alleged defect(s) not so specified in the inspection form at the Preclosing Final Walkthrough shall be deemed to have occurred after said date, and SELLER shall have no responsibility for such defect(s) or alleged defect(s). SELLER is not required to make repairs of a cosmetic nature unless caused by a defect SELLER is responsible to repair or replace. Once the preclosing Final Walk Through items are corrected at SELLER's discretion and SELLER's best ability, BUYER shall proceed to close at a time and date set by SELLER. REFUSAL TO DO SO WILL CONSTITUTE A DEFAULT, IN WHICH CASE SELLER SHALL HAVE THE RIGHTS SET FORTH IN PARAGRAPH 10 OF THIS CONTRACT.

BUYER acknowledges that, BUYER may only conduct "one walk through" prior to closing. SELLER is only required to correct the items in the original walk through. SELLER has no obligation to correct items that BUYER may generate as a result of a second inspection. In the event individuals other than BUYERS accompany the BUYER during the walk through, such individuals are required to present proper insurance to SELLER. Otherwise at the request of the SELLER, such individuals may not be allowed to accompany BUYER during the walk through.

10. **DEFAULT**. In the event BUYER is in default of any provisions of this agreement, at SELLER's option, SELLER has the right to cancel this agreement unilaterally in which case BUYER forfeits his/her deposit in full. At SELLER's discretion SELLER has the option to allow BUYER to cure a default resulting from failure to close on the date set under Section 7 or 9 herein, in this case BUYER shall pay to SELLER a charge of $ 200.00 per day for each day of delay following said date of closing. SELLER may also sue BUYER for specific performance of this Contract. If, for any reason other than failure of SELLER to make SELLER's title marketable after diligent effort, SELLER fails, neglects, or refuses to perform this Agreement, the BUYER may seek specific performance or elect to receive the return of BUYER's deposit. In the event BUYER issues a check that does not clear the bank due to funds not being available, it shall constitute a default under the terms of this contract. The SELLER may then cancel the contract.

11. **CLOSING COSTS**. BUYER shall pay the following costs at closing: a. Fees for recording the deed;

b. Any attorney's fees incurred by BUYER;

c. All costs and fees payable in connection with any mortgage that BUYER may obtain on the Unit;

d. Costs for documentary stamps on the deed conveying title and the owner's title insurance policy;

e. A one-time $300 fee payable to the Association.

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f. Any other document preparation and closing costs.

SELLER will contribute a total of $5,000 toward closing costs if BUYER uses SELLER's preferred lender, Contemporary Mortgage Services, Inc. Corky Howland: 407-834-3377 or Caliber Home Loans, Francheska Rodriguez: 407-719-0216. Movement Mortgage, Diana Arango: 407-852-6717.

12. **PRORATIONS**. The following items shall be prorated between SELLER and BUYER as of the date of closing;

a. Monthly Common Expense Assessment for the Unit owed to the Association for the remainder of the applicable payment period (be it monthly, quarterly, or annually) presently set at $600 per year.

b. General real estate taxes for the year of closing.

13. **DOCUMENTS EXECUTED BY SELLER**. SELLER will execute and deliver to BUYER a Warranty Deed and an Affidavit of No Liens with respect to the Unit conveyed.

14. **OCCUPANCY AND DISBURSEMENT**. Occupancy shall be delivered to BUYER at closing. The granting by SELLER of any limited right of possession or access to the Unit to BUYER before closing shall not constitute a waiver by SELLER of any of BUYER's obligations under this Contract. Any such limited right of possession or access in favor of BUYER shall be strictly subject to the consent of SELLER and shall not be a right of BUYER.

15. **RECORDING; ENTIRE CONTRACT; MODIFICATION; SURVIVAL; NOTICES; EFFECTIVE DATE; INSURANCE; AND TIME IS OF THE ESSENCE**. Neither this Contract nor any notice or memorandum hereof may be recorded in the Public Records of Orange County, Florida. This Contract contains the entire understanding between BUYER and SELLER, and BUYER hereby warrants that BUYER has not relied on any verbal representations, advertising, portrayals, or promises other than as contained herein. This Contract may not be modified, amended, or rescinded except by a written agreement signed by both BUYER and SELLER. The provisions and disclaimers in this Contract that is intended to have effect after closing will survive closing and delivery of the Warranty Deed. Unless otherwise notified in writing, notices shall be deemed duly sent if mailed or emailed, to either SELLER's or BUYER's respective address as listed on the first page of this Contract. This Contract shall become effective on the date when the last one of BUYER and SELLER has signed this Contract. BUYER shall have an affirmative duty to obtain and keep in good standing a hazard insurance policy on the Owner's Dwelling Unit in an amount not less than the replacement value thereof and naming the Association as a coinsured thereunder. Each Owner shall deliver a copy of said policy to the Association on the closing date on which an Owner obtains title to a Dwelling Unit and shall deliver evidence of the continued good standing of said policy annually thereafter.

16. **GOVERNING LAW; PARTIES BOUND AND PRIOR OCCUPANCY.** This contract shall be construed in accordance with the laws of the State of Florida, and shall, except as otherwise expressly provided herein, bind and inure to the benefit of the heirs, personal representatives, successors, and assigns of BUYER and SELLER. As used in this Contract, the word "BUYER" shall mean all BUYERS, jointly and severally, if there be more than one. The Unit that is the subject of this Contract has not been occupied previously.

17. **ASSIGNABILITY**. This Contract is not assignable by BUYER. SELLER shall have the right to assign its right under this Contract to a mortgage lender as additional security, and there shall be no restrictions on SELLER's ability to assign its obligations and rights under this Contract to any third party.

18. **RISK OF LOSS**. SELLER shall bear the risk of loss before closing unless possession of the Unit is

delivered to BUYER before closing, and in the latter event, the risk of loss shall be borne by BUYER as of the date of delivery of possession.

19. **INSULATION RIDER**. The BUYER shall be entitled to have the energy efficiency rating of the property determined.

Information regarding the type, thickness, R-value and location of insulation which is specified to be installed in each part of the Unit or surrounding the same is shown in the following table. Since this building is not constructed, the following information provided is based on the construction specifications only and not on the insulation actually installed. All R-values described are based upon information received from the manufacturer of the insulation materials and do not constitute representations or warranties of the SELLER. SELLER reserves the right to substitute a different type of thickness of insulation from that hereafter disclosed. However, in no event would the R-value for each respective use be less than that disclosed below. Should SELLER substitute a different type or thickness of insulation, the new disclosures concerning the substituted material will be supplied to BUYER as soon as the same is available.

TABLE OF INSULATION DATA

R-38 Blown over ceilings of living area.
R-4.1 Fi-foil installed in exterior furred walls.
R-13 Unface installed in wall between garage and living area.
R-13 Unface installed in interior sound walls per plans.
Polycel around doors, windows, and penetrations.

20. **RADON GAS**. F.S. Section 404.056(6) requires that the following notification be provided to BUYERS of real property located in the State of Florida: "Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."

21. **BROKERS**. BUYER represents that BUYER has not dealt with any real estate broker or agent other than SELLER's representatives and: N/A

NAME: MIA CHENG- NIZZ REALTY INC
ADDRESS: 2414 NW 138TH DR, SUNRISE FL 33323
EMAIL: [redacted]@GMAIL.COM
PHONE: [redacted]

BUYER agrees to indemnify and hold SELLER harmless from: (a) the claim of any real estate broker or sales agent other than the above named broker(s) and (b) the claims of any real estate broker, including the above named broker(s), and in the event of BUYER's default hereunder, BUYER's indemnification obligations shall survive the closing of this transaction. Broker to receive a 3 % commission based on the purchase price upon closing of this transaction. Obligations of SELLER to pay real estate commission to broker will apply only if said broker is an "Active Licensee" under the provisions of the Department of Business and Professional Regulation at the time of contract execution. There will be no commission paid to any cooperating broker if not indicated herewith.

22. **SALES PROMOTION**. For the Purpose of completing the sales promotion of this Home until the sale of all Units in the community, SELLER is hereby given full right and authority to maintain or establish at the Property all models, sales office, and advertising signs and banners if any, and lighting in the connection

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therewith, together with the right of ingress and egress and transient parking through the Property. This clause shall survive the closing contemplated herein and delivery of the deed to the BUYER.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date(s) indicated below.

BUYER(S):

Signature: DocuSigned by: YIFAN SHEN ADAC2B1ABCB5423...	Signature:
Name: YIFAN SHEN	Name:
Social Security No:	Social Security No:
Date of Execution: 4/14/2023	Date of Execution:

NEW EARTH PROPERTIES LLLP, a Florida Corporation:

Signature: DocuSigned by: Max Sabeti 96DA5C2367214B7...

Title: General Partner

Date of Execution: 4/12/2023

DISCLOSURE SUMMARY FOR BLUE DIAMOND

IF THE DISCLOSURE SUMMARY REQUIRED BY CHAPTER 720, FLORIDA STATUTES, HAS NOT BEEN PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE EXECUTING THIS CONTRACT FOR SALE, THIS CONTRACT IS VOIDABLE BY BUYER BE DELIVERING TO SELLER OR SELLER'S AGENT OR REPRESENTATIVE WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS AFTER RECEIPT OF THE DISCLOSURE SUMMARY OR PRIOR TO

CLOSING, WHICHEVER OCCURS FIRST. ANY PURPORTED WAIVER OF THIS VOIDABILITY RIGHT HAS NO EFFECT. BUYER'S RIGHT TO VOID THIS CONTRACT SHALL TERMINATE AT CLOSING.

BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THIS DISCLOSURE.

1. As a Purchaser of property in this Community, you will be obligated to be a member of a Homeowners' Association.

2. There have been recorded Restrictive Covenants governing the use and occupancy of properties in this Community, namely the Declaration of Covenants, Conditions & Restrictions for Blue Diamond, Bylaws of Blue Diamond Owners Association, and Articles of Incorporation of Blue Diamond Owners Association, copies of which have been provided to BUYER, as acknowledged by the signature below.

3. You will be obligated to pay assessments to the Association. Assessments may be subject to periodic change. If applicable, the current amount is $600 per YEAR. You will also be obligated to pay any special assessments imposed by the Association.

3. You will be obligated to pay Assessments to the Association. You will be obligated to pay Special Assessments to the respective Municipality, County or Special District. All Assessments are subject to periodic change.

4. Your failure to pay Special Assessments or Assessments levied by a mandatory Homeowners' Association could result in a lien on your property.

5. There is not an obligation to pay rent or Land Use fees for recreational or other commonly used facilities as an obligation of membership in the Homeowners' Association.

6. The Restrictive Covenants cannot be amended without the approval of the Association Membership.

7. The statements contained in this Disclosure form are only summary in nature, and, as a prospective Purchaser, you should refer to the Covenants and the Association Governing Documents before purchasing property.

8. These documents are or will be matters of public record and can be obtained from the record office in the county where the property is located.

9. The lake at Blue Diamond is for aesthetic benefits only. No recreational uses are available or allowed.

4/14/2023		DocuSigned by: YIFAN SHEN ADAC2B1ABCB5423...
Date:	Purchaser:	
Date:	Purchaser:	

Addendum "A"

PURCHASER(s): YIFAN SHEN

SUBDIVISION: BLUE DIAMOND MODEL: SOLITAIRE A

ELEVATION: A LOT: [redacted]

Options, or changes order charges, are not to be refunded under any circumstances after start of construction.

COLOR SELECTIONS. SELLER allows BUYER to maker color selections based upon materials available. BUYER agrees to make selections within 7 days of being notified to do so. Buyer acknowledges that construction delays will occur if selections are not made in a timely manner. If any material should prove not available, BUYER will be notified to make another selection. There will be no charge in this event.

Item	Cost
SELLER WILL PAY A TOTAL OF $5000 TOWARD THE TOTAL CLOSING COSTS	
LOT PREMIUM	$5,000

BASE PRICE:	$479,900
TOTAL OPTIONS:	$5,000
TOTAL PURCHASE PRICE:	$484,900

AGREED TO:

DocuSigned by:
YIFAN SHEN
ADAC2B1ABCB5423...

4/14/2023

Purchaser: Date:

Purchaser: Date:

STANDARD LUXURY FEATURES

GOURMET KITCHEN

- Pantry Per Plan
- Icemaker Line
- Double Bowl Sink with Sprayer
- Stainless Steel Self-Cleaning Range w/ Glass Cook Top
- Stainless Steel Multi-Cycle Dishwasher
- Stainless Steel Microwave Oven
- Food Waste Disposal System
- Ceramic Tile (your choice of colors)
- Granite Countertops
- 42" Solid Wood Designer Cabinets

LUXURY BATHROOMS

- Full Vanity Mirrors
- Elongated Toilets
- Ceramic Tile Flooring in All Bathrooms
- Water-Saving Showerheads
- Quality Plumbing Fixtures
- Double Bowl in Master Bath
- Ceramic Tile Walls/Shower
- Granite Countertops

SAFETY & ENERGY EFFICIENCY

- R-38 Ceiling Insulation
- 40-Gallon Quick Recovery Hot Water Heater
- Energy Efficient A/C w/ Heat Pump
- Maintenance Free Vented Aluminum Soffits
- Energy Efficient Roof Vents
- Energy Saving Fiberglass Paneled Entry Doors
- Protective Smoke Detectors

OUTSTANDING INTERIOR

- Ceramic Tile Floor in Foyer
- 10' High Ceilings on 1st Floor
- 3 1/4 inch Colonial Base Molding
- Raised Paneled Interior Doors
- Designer Light Fixture Package
- Pre-Wired for four Phone Jacks
- Pre-Wired for four Cable TV Outlets
- Pre-Wired for Fans in Family Room and Master Bedroom
- Your Choice of Stain Resistant Carpet
- Electric Smoke Detector/Door Chimes
- Garage Door Opener w/ Two Controls

QUALITY CONSTRUCTION

- Concrete Block Structure
- Architectural Shingle Roofs
- White Aluminum Window Frames
- Professionally Engineered Roof Trusses w/ Hurricane Clips for Wind Protection
- 10-Year Structural Warranty
- 1-Year Builder Warranty

SPECIAL FEATURES

- Professionally Landscaped Community
- Fully Sodded Yard w/ Irrigation System
- Air Filtration Prevention Sealing
- Underground Utilities

V52 SERIES

-45' WIDE LOTS-

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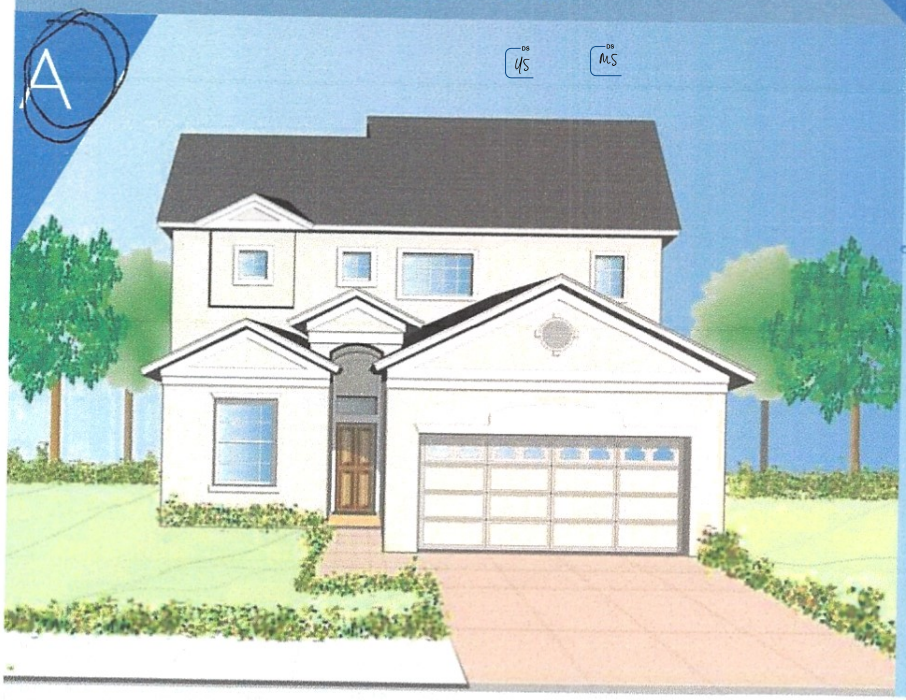
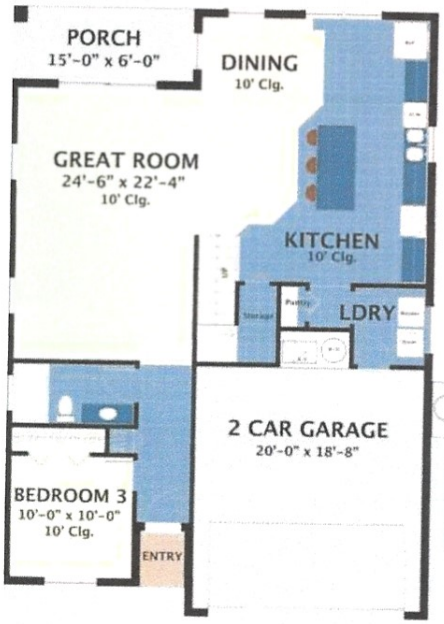


The Solitaire

A solitaire diamond is the only gem a ring or necklace needs. Likewise, this home is sufficient to meet all your needs, with its two master suites, great room, and bedroom on the first floor.



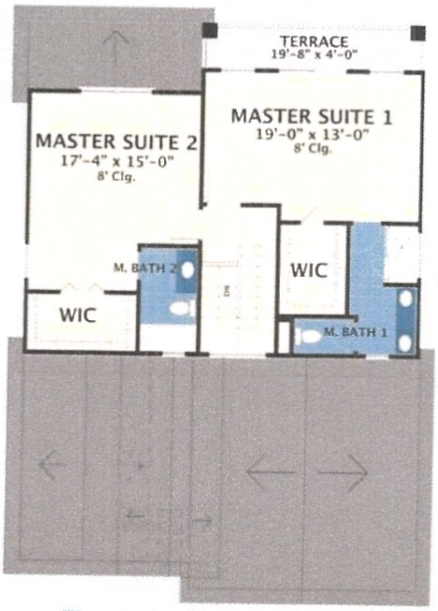


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Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

YIFAN SHEN, an individual, ZHIMING XU, an individual, XINXI WANG, an individual, YONGXIN LIU, an individual, and MULTI-CHOICE REALTY LLC, a limited liability corporation,

Plaintiffs,

v.

ASHLEY MOODY, in her official capacity as Attorney General of the State of Florida, WILTON SIMPSON, in his official capacity as Commissioner of Agriculture for the Florida Department of Agriculture and Consumer Affairs, MEREDITH IVEY, in her official capacity as Acting Secretary of the Florida Department of Economic Opportunity, PATRICIA FITZGERALD, in her official capacity as Chair of the Florida Real Estate Commission, R.J. LARIZZA, in his official capacity as State Attorney for the 7th Judicial Circuit, MONIQUE WORRELL, in her official capacity as State Attorney for the 9th Judicial Circuit, KATHERINE RUNDLE, in her official capacity as State Attorney for the 11th Judicial Circuit,

Defendants.

Case No. 4:23-cv-208-AW-MAF

DECLARATION OF ZHIMING XU

I, Zhiming Xu, hereby declare as follows:

1. I am a plaintiff in the above-captioned action, and I make this declaration in support of Plaintiffs' Motion for a Preliminary Injunction, filed concurrently herewith. I have personal knowledge of the facts stated in this declaration, and if called to testify in this matter, I could and would competently testify to the facts contained herein.

A. Personal Background

2. I am a 41-year-old man of Asian descent and Chinese ethnicity.

3. I am a native-born citizen of the People's Republic of China.

4. I am neither a member of the Chinese government nor a member of the Chinese Communist Party.

5. I have lived in the United States and Florida since January 2019.

6. I am neither a United States citizen nor a permanent resident of the United States.

7. I initially entered the United States on a tourist visa and subsequently I applied for political asylum. Before coming to the United States, I was persecuted by the Chinese government and I had to flee to the United States. I am now waiting for the U.S. government to issue a decision on my political asylum application, and currently I am legally allowed to stay and live in the United States.

8. I have a bachelor's degree obtained in China.

9. I have not visited China since I moved to the United States in January 2019. I do not have any plans to ever return to China. At this time, my hope is that I will be able to obtain permanent status in the United States through the political asylum process. I have no intentions of ever going back to China because of my persecution by the Chinese government.

10. I own a short-term rental property management company with my

wife in the Orlando area. My company caters to short-term rental property owners in the local area. My work consists of both managing properties and doing repairs and maintenance. Due to the volume of my company's work, I am proud to say that my company is also a local employer. Over the years, my company has created job opportunities in the local community and has hired local workers.

B. Property Interests in Florida

11. I am a homeowner; I own my current residence in Winter Garden, Florida, where I have lived for about one and half years. My wife, who has also applied for political asylum and is waiting on the U.S. government to issue a decision on the application, is a co-owner of the property.

12. In early 2023, my wife and I signed a contract to buy a second residential property in Winter Garden, Florida, which we intend to be an investment property. Its nearest intersection is Egret Pointe Way and Parable Way, Winter Garden. I have placed a deposit on the purchase in the amount of $31,250. The estimated closing date is September 2023. A true copy of the contract with private information redacted is attached as Exhibit 1.

C. Irreparable Harm Caused by Florida's New Alien Land Law

13. I learned about the new Florida law, which is the subject of this lawsuit, from people I know, as well as from news and media reports. I have read the new law, read articles about it, and discussed it with others to try to understand what it means.

14. Based on my understanding, two independent provisions of Florida's New Alien Land Law require me to register my current property with the Florida Department of Economic Opportunity because I am Chinese. One provision requires me to register because I own real estate in Florida and am from China. A second provision, which applies to people from China and six other countries, requires me to register because my property appears to be located within ten miles of a critical infrastructure facility.

15. These registration requirements are burdensome, discriminatory, and stigmatizing to me. I am very worried that this registration will be used to target me, discriminate against me, monitor me, and generally harass me as a Chinese homeowner.

16. I feel that as a Chinese person, I have been singled out and targeted by the law simply because of where I came from, my ancestry, and my alienage status. The law stigmatizes me and wrongly treats me as suspicious because I am Chinese, which is extremely distressing to me.

17. I believe the new law will decrease the value of my existing property. If I decide to sell, potential buyers will likely look at it with suspicion and worry about the additional burdens or risks caused by the new law.

18. Moreover, based on my understanding, this new Florida law prohibits me from acquiring the second property that my wife and I are in contract to purchase. One provision forbids the purchase because we are Chinese and because our closing date is after July 1, 2023. Since we already own property in Florida and because of our current status in the United State, we are not eligible for the law's narrow exception. A second provision, which applies to people from China and six other countries, independently prohibits us from acquiring this property because it appears to be located within ten miles of a critical infrastructure facility. For both these reasons, I will be forced to cancel my contract for the purchase of my investment property, and I stand to lose all or part of my $31,250 deposit upon cancelling my contract.

19. I am extremely distressed at the prospect of not being able to acquire the second property and losing my deposit, which would be a major financial burden.

20. I am also very worried about my future ability to make another property purchase in Florida. Even though the new law contains an exception allowing certain people to purchase one residential property up to two acres in

size and not within five miles of a military installation, that exception does not apply to me as someone who currently owns real estate in Florida—and it is unclear if it would apply even if I were to sell my existing property. In addition, even if I become eligible for the exception after selling my current property, the new law is very unclear about the areas where I can legally purchase a home in Florida without risking criminal prosecution. It is extremely difficult to understand where I can safely purchase a property in the state because the definitions of "critical infrastructure" and "military installation" are ambiguous and very broad. I am very fearful that I could inadvertently purchase a home that violates the law and could be arrested and charged with a felony. If I were convicted, I could face up to five years in prison and a fine of $5,000, plus immigration consequences. On top of that, the property could be forfeited.

21. Relatedly, I am also very worried that I will be discriminated against by future sellers and real estate agents if I wanted to purchase another home because of their fear of the risk of violating the law and because I am Chinese. I believe that my search for real estate will be more costly, time-consuming, and burdensome under the new law because I am Chinese. The new law will cast a cloud of suspicion over me as a Chinese person.

22. The potential criminal consequences for violating Florida's new restrictions on purchasing and selling property, as well as the new registration requirements, are severe in themselves and could also trigger immigration consequences. As someone who is seeking political asylum in the United States, I am especially terrified of the risk of being deported back to China.

I declare under penalty of perjury under the laws of the United States and the State of Florida that the foregoing is true and correct.

Executed this __6th__ day of June, 2023.

Zhiming Xu

EXHIBIT 1

LENNAR HOMES LLC
6675 Westwood Blvd., 5th Floor
Orlando, FL 32821
407-586-4000

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (together with the Riders and Addenda attached hereto and incorporated by reference herein, this "**Agreement**") is made and entered into as of the fifteenth day of APRIL, 2023 by and between LENNAR HOMES LLC ("**Seller**"), and Buyer(s) named below ("**Buyer**"):

BUYER(S):	Check Applicable:
1. Zhiming Xu 2. Tao Li 3. 4. No Buyer Name Changes Will Be Permitted Unless Seller and Buyer Validly Execute an Amendment to Change Party.	Married ☒ Single ☐ Married ☒ Single ☐ Married ☐ Single ☐ Married ☐ Single ☐

Buyer Address: [redacted]		
City: Winter Garden	State / Country: FL / US	Zip: 34787

By providing your telephone numbers and your email address, you hereby consent to receiving telephonic and email communications, including advertisements, made or sent by or on behalf of Seller and/or its affiliates.

Home Telephone: _____ **E-mail Address:** [redacted]@gmail.com

Business Telephone: _____

Cellular Telephone: [redacted] _____

1. **Purchase and Sale**. Buyer agrees to buy and Seller agrees to sell to Buyer (on the terms and conditions set forth below) Model Simmitano constructed or to be constructed on the following described property:

Lot [redacted] of Block _____ of Storey Grove Subdivision/Plat, in ORANGE County (the "**County**"), Florida.

The residence and improvements (the "**Home**") constructed or to be constructed on the above described property (the "**Homesite**"), and all appurtenances thereto are collectively referred to in this Agreement as the "**Property.**" The Property is located within the community known as Storey Grove 50 (the "**Community**").

2. **Purchase Price and Payments**. The total purchase price ("**Total Purchase Price**") for the Home, exclusive of any Closing Costs as described in Rider B and the Purchase Price and Payment Addendum, is **$613,500.00**. Buyer (and not a third party) has made an earnest money deposit upon the signing of this Agreement (the "**Initial Deposit**") of **$30,675.00**. Buyer shall make further payments to Seller, including but not limited to any "**Additional Deposit**" or "**Advanced Payment**" (consisting of non-refundable deposit(s) for options, extras, and upgrades) as set forth in the Purchase Price and Payment Addendum attached hereto and made a part hereof. The term "**Deposit**" shall include the Initial Deposit, Additional Deposit and Advanced Payment.

3. **Builder's Fee**. Buyer acknowledges and agrees that in connection with the purchase of the Property, Buyer shall pay to Seller a builder's fee, equal to **1.00%** of the Total Purchase Price (the "**Builder's Fee**"). The Builder's Fee is imposed in connection with all home sales in the Community, regardless of whether Buyer finances the purchase of the Property. Notwithstanding the foregoing, Buyer acknowledges that the Builder's Fee may not be imposed on all home sales in the Community, and Seller reserves the right to change or withdraw the Builder's Fee on subsequent home sales in the Community at any time prior to Seller's completion of construction of all homes in the Community. The Builder's Fee represents additional revenue and is intended to compensate Seller for various internal costs and expenses associated with the sales, promotion and/or development of the Community. This fee is due at Closing. The Builder's Fee is separate from any and all Closing Costs (defined herein below). While the Builder's Fee is payable, along with various other fees, costs and amounts at Closing, the Builder's Fee is not a settlement fee associated with any loan that you may obtain to finance the purchase of the Property.

4. **Legally Binding Agreement**. THIS AGREEMENT IS A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, PLEASE SEEK COMPETENT LEGAL ADVICE. NO WARRANTIES OR REPRESENTATIONS, OTHER THAN THOSE SPECIFIED IN THIS AGREEMENT, ARE EXPRESSED OR IMPLIED. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF SELLER. FOR CORRECT WARRANTIES AND REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS AGREEMENT, INCLUDING THE RIDERS AND ADDENDA ATTACHED HERETO, AND THE "DOCUMENTS" (AS SUCH TERM IS DEFINED IN RIDER B) PROVIDED TO BUYER, IF ANY.

5. **Financing**.

☐ **CASH TRANSACTION**. If this box is checked, this is a cash transaction and not contingent on financing. Buyer agrees to provide within five (5) calendar days from the Buyer's execution of this Agreement financial statements or other written verification of Buyer's ability to purchase the Property with cash. If Buyer does not (in Seller's sole judgment, based on the documentation provided by Buyer to Seller) have the financial ability to purchase the Property with cash, then Seller may terminate this Agreement by refunding to Buyer any paid Deposit.

☒ **MORTGAGE TRANSACTION**. If this box is checked, Buyer desires to obtain a loan commitment (the "**Commitment**") within the Mortgage Period (as such term is defined in Rider B attached hereto) for a first mortgage loan from Lennar Mortgage, LLC (an affiliate of Seller), or another qualified institutional mortgage lender of Buyer's choice ("**Lender**"), with interest and service charges at current market rates at time of Closing (as defined below) for a borrower of Buyer's credit qualifications and with a loan term of at least thirty (30) years. Buyer agrees to apply within five (5) calendar days from the execution of this Agreement for a loan at the then prevailing interest rate. In the event Buyer chooses to obtain financing through a Lender other than Lennar Mortgage, LLC, Buyer agrees to provide Seller within five (5) calendar days with the name, address and phone number of such Lender, the loan officer and the loan processor. Buyer shall furnish promptly and accurately to Lender all information and documents requested by Lender in connection with such application. If Buyer provides Lender's written disapproval of loan within the Mortgage Period (and Buyer has not cancelled or withdrawn his/her loan application), Seller shall refund the Deposit to Buyer. If Buyer fails to provide Seller within the Mortgage Period with (i) a copy of the written Commitment reasonably satisfactory to Seller, or (ii) Lender's written disapproval of Buyer for such loan, Buyer shall be in default and Seller shall be entitled to retain the Deposit as liquidated damages for taking the Property off of the market and that the amount of liquidated damages is fixed and agreed to by the parties as a reasonable estimate of the damages that Seller shall suffer and is not in the nature of a penalty. If this Agreement provides for a VA guaranteed or FHA insured loan, Buyer's obligation to complete the purchase contemplated under this Agreement is subject to the VA/FHA Addendum attached hereto and incorporated herein.

The following shall apply only if Buyer desires to apply for a loan, as indicated above:

5.1 Prequalification. Buyer may have obtained a "prequalification" from Lennar Mortgage, LLC for the purpose of determining Buyer's ability to purchase the Property. BUYER UNDERSTANDS AND ACKNOWLEDGES THAT BUYER IS NOT OBLIGATED TO USE LENNAR MORTGAGE, LLC TO OBTAIN FINANCING TO PURCHASE THE PROPERTY.

5.2 Application. Buyer understands that any loan application required under this Agreement must be fully completed in order to obtain the mortgage loan, and Buyer will make a good faith attempt to qualify for the mortgage loan. If Buyer has a spouse who does not constitute a Buyer under this Agreement, Buyer agrees to have his/her spouse sign the mortgage documents as required by Lender. BUYER AGREES TO INCUR NO DEBT SUBSEQUENT TO THE EFFECTIVE DATE WHICH MIGHT JEOPARDIZE APPROVAL OF BUYER'S MORTGAGE LOAN. IF THE PROPERTY IS BEING PURCHASED BY A CORPORATION, PARTNERSHIP, OR OTHER ENTITY, BUYER AGREES TO (1) OBTAIN ANY PERSONAL ENDORSEMENTS OR GUARANTEES REQUIRED BY LENDER AND (2) PROVIDE TO LENDER AND/OR THE TITLE INSURER PROMPTLY UPON REQUEST SUCH CERTIFICATES, RESOLUTIONS OR OTHER CORPORATE, PARTNERSHIP OR OTHER ORGANIZATIONAL DOCUMENTS AS MAY BE REQUIRED. Except as provided in this Agreement, Buyer agrees to pay all loan fees and closing costs charged by Lender in connection with the mortgage loan. Buyer will pay any prepaid interest due on the mortgage loan at the time of Closing and any amount Lender may require to be put into escrow toward the payment of property taxes and insurance on the Property. Buyer will also pay any mortgage insurance premiums (prepaid or otherwise), if required by Lender.

5.3 Commitment. Any lender selected by Buyer shall not require the issuance of a certificate of occupancy and the appraiser's final inspection prior to the release of loan documents for Closing. Buyer understands that the rate of interest on the mortgage is established by Lender and not by Seller and that any predictions or representations of present or future interest rate that may have been contained in any advertising or promotion by Seller are not binding. If Buyer obtains a written mortgage loan Commitment and the mortgage loan Commitment is subsequently withdrawn through no fault of Seller including, but not limited to, any condition to such loan Commitment not being satisfied for any reason, this Agreement shall remain in full force and effect and Buyer shall be conclusively presumed to have agreed to purchase the Property as a cash transaction. If the mortgage loan Commitment is withdrawn following the expiration of the Mortgage Period, Buyer shall notify Seller, in writing, of such fact within five (5) calendar days. Buyer shall also provide financial statements or other written verification of Buyer's ability to purchase the Property with cash within five (5) calendar days of withdrawal of the Commitment. If Buyer does not (in Seller's sole judgment, based on the documentation provided by Buyer to Seller) have the financial ability to purchase the Property with cash, then Seller may terminate this Agreement by written notice and refunding to Buyer any paid Deposit. Once Buyer selects a Lender and obtains a Commitment acceptable to Seller, Buyer may change to another Lender at Buyer's discretion up to thirty (30) days prior to Estimated Completion Date provided Buyer notifies Seller in writing of such change and provides another Commitment (if there is a change in Lender) to Seller not later than thirty (30) days before the Estimated Completion Date. Buyer agrees that it will make no changes to its mortgage financing arrangement, including change of Lender, within the last thirty (30) days before Estimated Completion Date.

5.4 Appraisal. If the Lender's appraiser appraises the value of the Property for less than the Total Purchase Price, Buyer shall notify Seller, in writing, of such fact within three (3) calendar days from the receipt of the written appraisal. Seller shall then have the option, but not the obligation, in Seller's sole and absolute discretion, to: (i) lower the Total Purchase Price to the appraised value and Buyer shall proceed to Closing; or (ii) allow Buyer to pay the difference between the mortgage loan proceeds and the amounts required to close the transaction contemplated by this Agreement and proceed to Closing (the "**Additional Cash to Close Funds**"). Under no circumstances shall Buyer be excused from performance under this Agreement as a result of Lender's appraisal. Notwithstanding the foregoing, if this Agreement provides for a VA guaranteed or FHA insured loan, the applicable appraisal requirements are set forth in the FHA/VA Addendum attached hereto and incorporated herein.

5.5 Sale of Other Residence. Notwithstanding any condition in the loan Commitment to the contrary, and unless Seller agrees otherwise in writing, Buyer represents and warrants that this Agreement is not and will not be subject to or contingent upon Buyer's selling and/or closing on the sale of Buyer's present residence or other property. Failure to close on the purchase of the Property will constitute a default by Buyer and the remedies available to Seller for Buyer's default under this Agreement shall apply.

6. **Funds**. Buyer shall remit to Seller the Initial Deposit, Additional Deposit or Advance Payments by check, cashier's check or wire transfer. Buyer acknowledges that Seller shall have the right to deposit such check for the Initial Deposit without such action being deemed acceptance of this Agreement. If any such check is not paid by the bank after acceptance of this Agreement, Seller shall have the option to cancel this Agreement and declare Buyer in default. If Buyer provides any check for a Deposit in the form of Canadian currency (a "**C$ check**"), Seller's depository bank will convert such C$ check into a U.S. dollar amount using its currency procedures

and exchange rate then in effect two (2) business days following the date of processing (the "**Conversion Date**") and the amount of the Deposit to be applied toward the Total Purchase Price shall be equal to the amount received by Seller from the depository bank on the Conversion Date. Seller reserves the right to charge or pass through any currency conversion-related fees or costs to the Buyer at Closing (as hereafter defined). Notwithstanding the foregoing or anything contained in this Agreement to the contrary, the balance of the Total Purchase Price plus all applicable Closing Costs (the "**Closing Proceeds**") shall be paid to Seller at Closing. Any funds paid by Buyer under the terms of this Agreement to Seller, including funds paid through a check or cashier's check are accepted by Seller subject to collection.

UNLESS A WRITTEN REQUEST FOR PAYMENT BY CASHIER'S CHECK IS RECEIVED AND APPROVED BY SELLER NOT LESS THAN FIVE (5) BUSINESS DAYS PRIOR TO CLOSING, BUYER ACKNOWLEDGES AND AGREES THAT CLOSING PROCEEDS MUST BE BY FEDERAL WIRE TRANSFER IN IMMEDIATELY AVAILABLE FUNDS. BUYER IS RESPONSIBLE FOR ALL BANK OR WIRE TRANSFER CHARGES AND CURRENCY EXCHANGE FEES. WITHOUT LIMITING ANY OTHER PROVISIONS HEREIN, IF ANY DEPOSIT AND/OR CLOSING PROCEEDS ARE NOT TIMELY PAID, BUYER SHALL BE IN DEFAULT. Notwithstanding the foregoing, if Seller approves Buyer's written request to deliver a cashier's check and thereafter Buyer delivers all or any portion of the Closing Proceeds in the form of a cashier's check exceeding $25,000.00, then Buyer will not be entitled to possession of the Home until the cashier's check has cleared.

7. **Credit Information Authorization**. Buyer authorizes Lender to whom Buyer has applied or is in the process of applying for a mortgage loan in connection with this transaction to disclose to Seller the information contained in any loan application, verification of Deposit, income and employment, and credit reports or credit related documentation on Buyer. Buyer authorizes Seller to order one or more credit reports from a consumer reporting agency to be used in connection with this transaction. The cost of said report(s) is (are) to be paid by Buyer. Buyer authorizes Seller to forward all copies of all or any portion of such report(s) without interpretation to Lender who (at the request of Buyer) will evaluate a potential extension of credit to Buyer in connection with this transaction. Buyer authorizes Lender, and any credit bureau or other person or entity utilized or engaged by Lender, to obtain one or more consumer reports regarding Buyer and to investigate any information, reference, statement, or data, provided to Lender by Buyer or by any other person or entity, pertaining to Buyer's credit and financial status. Buyer shall indemnify, defend and hold harmless Seller, its officers, directors, shareholders, employees, agents, contractors, subcontractors and suppliers ("**Indemnified Parties**"), Lender, and any credit bureau or other person or entity utilized or engaged by Lender or Seller, from and against any deficiencies, losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, awards, suits, costs or disbursements of any kind or nature whatsoever, including attorneys' fees and expenses ("**Claims**") arising from an investigation of Buyer's credit and financial status.

8. **Closing**. Without limiting the terms of Section 9, Buyer acknowledges and agrees that Seller has the right in its sole discretion to schedule the date and place for the closing of the transaction contemplated by this Agreement ("**Closing**") and Buyer shall close on such Closing Date (the "**Closing Date**"). Upon Closing all contracted services to be performed under this Agreement by Seller (the "**Contracted Services**") shall be deemed completed and fully performed, and this Agreement shall be deemed completed, within the meaning of Florida Statutes § 95.11(3)(c). Contracted Services shall not include any corrections of defects or deficiencies in the Home, punch list work, or warranty work. Buyer will be given notice of the Closing Date by the "Closing Date Notice Period" (as such term is defined in Rider B attached hereto). Seller is authorized to postpone or advance the date of Closing at its discretion. Seller must, however, give Buyer reasonable notice of the new Closing Date. Any notice of Closing may be given verbally, by telephone, telegraph, telex, facsimile, mail, e-mail, or other means of communication at Seller's option. All notices of Closing will be given to Buyer at the address or by use of the telephone number(s) or e-mail address(es) specified in this Agreement unless Seller has received written notice from Buyer of any change therein prior to the date notice of Closing is given. Buyer's failure to receive the notice of Closing because Buyer has failed to advise Seller of any changes of address or phone number, or because Buyer has failed to pick up a letter when Buyer has been advised of an attempted delivery or for any other reason, shall not relieve Buyer of Buyer's obligation to close on the scheduled Closing Date, unless Seller otherwise agrees in writing to postpone the Closing Date. If Buyer fails, for any reason, to close on the date specified by Seller, Seller shall have the option to declare Buyer in default and seek the remedies stated in Section 15 below, or to charge Buyer Three Hundred Dollars ($300.00) per day for each day after the date of Closing specified by Seller until, and including, the actual Closing Date, and Seller may require that prorations be made as of the original Closing Date. This sum shall be due and payable in full at the time the extension is accepted by Seller. In addition, if Seller agrees to an extension of the date of Closing beyond the last day of the month for which Closing is originally set, an amount equal to One Percent (1%) of the Total Purchase Price shall also be payable to Seller. The sum for extending the date of Closing beyond the last day of the month shall be due and payable in full at the time the extension is accepted by Seller. Buyer agrees that the late charges are appropriate in order to cover Seller's administrative and other expenses resulting from a delay in Closing and that the amount of liquidated damages is fixed and agreed to by the parties as a reasonable estimate of the damages that Seller shall suffer and is not in the nature of a penalty. Seller is not required to agree to reschedule Closing, but Seller may reschedule Closing in Seller's sole discretion. It is a requirement that Buyer's Lender meet the Closing date and a delay by the Lender shall not be an excuse for Buyer's timely performance. The Closing date must be met even though the certificate of occupancy and final appraiser's inspection may not be received until after the day of Closing. The Lender may make the receipt of said items a "funding condition" prior to final disbursement but the receipt of these items shall not be a condition preventing the preparation and release of loan and closing documents for Closing. Notwithstanding the foregoing and subject to the provisions of Section 5.2 above, if the Mortgage Transaction box is checked above, Seller will agree to postpone Closing and not impose late charges to the extent such postponement is required in order for Buyer's Lender to meet any pre-closing waiting period required as the result of Buyer's Lender's issuance of revised closing disclosures under 12 C.F.R. § 1026.19(f)(2)(ii) of the Consumer Financial Protection Bureau's TILA-RESPA Integrated Disclosure Rule when such revisions directly result from a Seller action taken within six (6) calendar days of the Closing Date. However, in such event, Seller shall have no liability to the Buyer for failure to deliver the Property on the originally scheduled Closing Date.

9. **Completion Date**. It is expressly agreed by Buyer that notwithstanding anything to the contrary specified herein or verbally represented (including but not limited to Seller's sales representative), any scheduled completion date is a good faith estimate, and Seller makes no promises or representations concerning the date of completion. Buyer agrees that Buyer has not relied, and will not rely upon, any estimated completion date for any purpose whatsoever, including, without limitation, relocation of residence, storage of personal property, or lock-in financing, and Buyer agrees that Seller shall not be liable for any additional costs, expenses or damages whatsoever should the Home not be completed by an estimated completion date. Notwithstanding the foregoing, upon Closing all Contracted Services to be performed under this Agreement by Seller shall be deemed completed and fully performed, and this Agreement shall be deemed completed, within the meaning of Florida Statutes § 95.11(3)(c). Contracted Services shall not include any corrections of defects or deficiencies in the Home, punch list work, or warranty work. Notwithstanding the foregoing, Seller is required to complete and does agree that the construction of the Home shall be completed not later than two (2) years from the date of Buyer's execution of this Agreement. If construction is delayed by any event recognized by the law of the state in which the Home is located as a defense to a contract action for non-performance or a delay in performance, then the date of completion shall be extended

by the delay period. It is the express intent of the parties that the parties' rights and obligations under this Agreement be construed in the manner necessary to exempt this Agreement and the sale of the Property from registration under the Interstate Land Sales Full Disclosure Act, and both Buyer and Seller hereby expressly waive any right or provision of this Agreement that would otherwise preclude such exemption.

10. **Casualty Before Closing**. If the Property is damaged by fire, vandalism, act of terrorism or other casualty before Closing and the cost of restoration does not exceed three percent (3%) of the Total Purchase Price and repairs will not substantially delay Closing, Seller shall repair the damage and Closing shall proceed pursuant to the terms of this Agreement. If the cost of restoration exceeds three percent (3%) of the Total Purchase Price or the repairs would substantially delay Closing, Buyer shall have the option to: (1) terminate this Agreement and receive a refund of the Deposit made by Buyer to Seller, in which event both parties shall be released from all obligations under this Agreement, or (2) have Seller repair the damage as soon as reasonably possible, and Closing shall be extended until such repair or rebuilding is complete.

Notwithstanding the foregoing, if all or a portion of the Property is damaged by fire, vandalism, act of terrorism or other casualty or condition and the repair or reconstruction of the Property substantially in accordance with the plans and specifications is rendered impossible by any cause recognized by the law of the state in which the Property is located as a defense to a contract action for non-performance, then Seller shall have the right to terminate this Agreement and Buyer shall receive a refund of the Deposit made by Buyer to Seller in which event both parties shall be released from all obligations under this Agreement.

11. **Deed**. Seller shall convey title to Buyer at Closing by delivery to Buyer of a Special Warranty Deed (the "**Deed**") describing the Property, which Deed shall convey title to Buyer subject to all matters described in Sections 12.1, 17 and 18 of this Agreement. Any such matters omitted from the Deed shall nevertheless be deemed to be included in the Deed. Upon Closing, within the meaning of Florida Statutes § 95.11(3)(c): (1) Buyer shall have actual possession of the Property, (2) all Contracted Services to be performed under this Agreement by Seller shall be deemed completed and fully performed, and (3) this Agreement shall be deemed completed. Contracted Services shall not include any corrections of defects or deficiencies in the Home, punch list work, or warranty work.

12. **Closing and Title Matters**. Title to the Property to be delivered to Buyer at Closing will be marketable and insurable, subject only to the following matters:

12.1 Title to the Property shall be subject to the following: (1) zoning, building codes, bulkhead laws, ordinances, regulations, rights or interests vested in the United States of America or the state in which the Community is located; (2) real estate taxes and other taxes for the year of conveyance and subsequent years including taxes or assessments of any special taxing or community development district (including assessments relating to capital improvements and bonds); (3) the general printed exceptions contained in an owner's title insurance policy; (4) utility easements, sewer agreements, telephone agreements, cable agreements, telecommunications agreements, monitoring agreements, restrictions and reservations common to any plat affecting title to the Property; (5) matters that would be disclosed by an accurate survey or inspection of the Property; (6) the Documents; (7) any laws and restrictions, covenants, conditions, limitations, reservations, agreements or easements recorded in the public records for the County (for example, use limitations and obligations, easements (right-of-way) and agreements relating to telephone, gas or electric lines, water and sewer lines and drainage, provided they do not prevent use of the Property for single family residential purposes); (8) minor encroachments on easements that do not substantially interfere with an easement holder's interest in the Property; (9) acts done or suffered by Buyer and any mortgage or deed of trust obtained by Buyer for the purchase of the Property; and (10) any deed restrictions reflected in the Deed which specifically incorporate Chapter 558 of the Florida Statutes and the mediation, arbitration and litigation provisions set forth in this Agreement. It is Buyer's responsibility to review and become familiar with each of the foregoing title matters, some of which are covenants running with the land. If any title defects are discovered by Buyer after Closing, Buyer's sole remedy shall be to make a claim to Buyer's title insurer.

12.2 Seller shall provide an affidavit complying with the Foreign Investment in Real Property Tax Act of 1980, as amended, upon written request of Buyer.

12.3 Seller may not own title to the Property as of the date of this Agreement or at Closing. However, Seller shall obtain title to the Property on or before the Closing Date or effect the necessary transfer of title on or before the date when Seller causes title to be transferred to Buyer.

12.4 If Seller cannot provide marketable and insurable title as described above, such failure shall not be an event of default and Seller will have a reasonable period of time (at least one hundred twenty (120) days from the date of the scheduled Closing Date) to attempt to correct any defects in title; provided, however, Seller shall not be obligated to incur any expense, nor institute any litigation, to clear title to the Property. If Seller cannot or elects not to correct the title defects, Seller shall so notify Buyer within such period, and Buyer may thereafter elect (by written notice from Buyer to Seller) one of the following two (2) options: (1) to accept title in the condition offered (with defects) and pay the balance of the Total Purchase Price for the Property (without set off or deduction therefor), thereby waiving any claim with respect to such title defects and Buyer will not make any claims against Seller because of the title defects; or (2) to terminate this Agreement and receive a full refund of the Deposit deposited hereunder. If all such amounts are refunded, Buyer agrees to accept it as full payment of Seller's liability hereunder, whereupon this Agreement shall be terminated and Seller shall thereafter be relieved and released of all further liability hereunder. Buyer shall not thereafter have any rights to make any additional claims against Seller. In the event Buyer does not notify Seller in writing within five (5) calendar days from the receipt of Seller's notice (time being strictly of the essence) as to which option Buyer elects, Buyer shall be conclusively presumed to have elected option (1) set forth above in this subsection.

12.5 Title to the Property will be deemed marketable if an owner's policy is issued with standard exceptions.

12.6 The acceptance of the Deed by Buyer shall be deemed to be full performance and discharge of every agreement and obligation on the part of Seller to be performed pursuant to this Agreement. UPON SELLER'S DELIVERY, AND BUYER'S ACCEPTANCE, OF THE DEED ON THE CLOSING DATE, ALL CONTRACTED SERVICES TO BE PERFORMED UNDER THIS AGREEMENT BY SELLER SHALL BE DEEMED COMPLETED AND FULLY PERFORMED, AND THIS AGREEMENT SHALL BE DEEMED COMPLETED, WITHIN THE MEANING OF FLORIDA STATUTES § 95.11(3)(c). CONTRACTED SERVICES SHALL NOT INCLUDE ANY CORRECTIONS OF DEFECTS OR DEFICIENCIES IN THE HOME, PUNCH LIST WORK, OR WARRANTY WORK.

13. **Closing Costs**. The respective responsibilities of Buyer and Seller for all costs, prorations and fees payable at Closing (the "**Closing Costs**") are shown in Rider B attached hereto.

14. **Site and Substitutions**. The materials, equipment and fixtures included in and to be used in constructing the Home will be substantially the same as or similar in quality to those described in the applicable plans and specifications (except as to extras, options and/or upgrades).

14.1 Changes to Plans and Specifications.

14.1.1 Industry Practice. It is widely observed construction industry practice for pre-construction plans and specifications for any home or building to be changed and adjusted from time to time in order to accommodate on-going site conditions and in the field construction factors. These changes and adjustments are essential in order to permit all components of the Home to be integrated into a well-functioning and aesthetically pleasing product in an expeditious manner. Based on the foregoing, Buyer acknowledges that such changes and adjustments may occur and agrees that it is reasonable and to Buyer's benefit to allow Seller the flexibility to make such changes and adjustments to the Home.

14.1.2 Seller's Absolute Right to Make Modifications to Plans and Specifications. Seller has the absolute right to make modifications to the plans and specifications for the Home. Without limiting the generality of the foregoing, Buyer specifically agrees that changes in the dimensions of rooms and patios, entrances and terraces, if applicable, and changes in room size, in the locations of windows, doors, walls, partitions, utility lead-ins and outlets (including, but not limited to, electrical, cable television, and telephone), air-conditioning components, lighting fixtures and electrical panel boxes may be made by Seller in its sole discretion, provided however that changes in the layout and dimensions of the Home shall not substantially affect the value of the Home. Such changes may also include, but are not limited to, changes in the building location, setbacks and facing, the building's external configuration, its structural components, its finishes and the landscaping associated therewith.

14.1.3 Buyer's Acceptance of Actual Floor Plan. Buyer further understands and acknowledges that many of the Homes to be constructed within the Community require floor plans which are opposite (i.e. flipped) mirror images of the model floor plan and Buyer fully understands and accepts the floor plan configuration for the Home and improvements to be constructed within the Home.

14.1.4 No Warranty for Plans and Specifications on File. Buyer further acknowledges and agrees that (1) the plans and specifications of the Home and the Community on file with the applicable governmental authorities may not be identical in detail to Seller's plans and specifications, and (2) because of the day-to-day nature of the changes described in this Section 14, the plans and specifications on file with the applicable governmental authorities may not include some or any of these changes (there being no legal requirement to file all changes with such authorities). As a result of the foregoing, Buyer and Seller both acknowledge and agree that the Home and the Community may not be constructed in accordance with the plans and specifications on file with the applicable governmental authorities. Without limiting the generality of the provisions of Rider B attached hereto, Seller disclaims and Buyer waives any and all express or implied warranties that construction will be accomplished in compliance with such plans and specifications. Seller has not given and Buyer has not relied on or bargained for any such warranties. In furtherance of the foregoing, in the event of any conflict between the actual construction of the Home and/or the Community, and that which is set forth on the plans and specifications, Buyer agrees that the actual construction shall prevail and to accept the Home and Community as actually constructed (in lieu of what is set forth on the plans and specifications).

14.2 Lot Change. In the event that Seller, in its sole discretion, determines that the Model of the Home selected under this Agreement cannot reasonably be built on the Homesite, then Buyer and Seller hereby agree that they will negotiate in good faith to relocate the Home to another lot in the Community, provided however that there are lots available for sale. If no replacement lot is available, then Buyer may terminate this Agreement and will be entitled to a refund of any paid Deposit.

14.3 Decorative and Landscaping Items.

14.3.1 Buyer understands and agrees that certain of the finishing items, such as tile, marble, carpet, cabinets, stone, brickwork, wood, paint, stain and mica are subject to size and color variations, grain and quality variations, and may vary in accordance with price, availability and changes by manufacturers from those shown in the model, if any, or in illustrations or brochures or those included in the specifications. Furthermore, if circumstances arise that, in Seller's opinion, warrant changes of subcontractors, suppliers, manufacturers, brand names or items, Seller reserves the right to substitute equipment, materials, appliances, etc., which in Seller's opinion are considered to be of quality substantially similar or equal, or of better quality, subject to their availability. Buyer also understands that Seller has the right to substitute or change materials and/or stain colors utilized in wood decor, if any.

14.3.2 Lot grades, lot area, options, facades, shrubs, trees, trim, built-ins, wall treatments, window treatments, furniture, furnishings, fences, decks, locations of walks, driveways and other items in or about a model home area in the subdivision are for display purposes only and are not included in the Total Purchase Price unless otherwise expressly provided herein. Seller has the right to remove any existing trees on the Property or on the surrounding area for any reason. Buyer further understands and agrees that the following items (which may be seen in models or shown in illustrations) will also not be included with the sale of the Home: wall coverings, paint colors, accent light fixtures, wall ornaments, drapes, blinds, bedspreads, furniture, furnishings, wet bars, monitoring systems, certain built-in fixtures, special floor coverings, wood trim, upgraded items and/or any other items of this nature which may be added or deleted from time to time. This list of items (which is not all-inclusive) is provided as an illustration of the type of items built-in or placed upon models or shown in illustrations strictly for purposes of decoration and example only.

14.4 Deed. By acceptance of the Deed, Buyer accepts all variations of the Home.

15. **Buyer's Default**. In the event of Buyer's default and to the extent allowed by law, Seller shall be entitled to terminate the Agreement and keep, as liquidated damages and not as a penalty, Buyer's Deposit not to exceed fifteen percent (15%) of the Total Purchase Price, except that Seller may, in addition, keep, as liquidated damages and not as a penalty, any and all Advanced Payments made by Buyer to Seller for options, extras or upgrades for which Seller has made contractual commitments or incurred liability by placing orders or otherwise. Buyer agrees that actual damages in the event of breach by Buyer would be costly and difficult to calculate, and that such liquidated damages are a fair and reasonable remedy and shall not be considered a penalty.

16. **Seller's Default**. In the event of Seller's default and to the extent allowed by law, Buyer may recover actual damages but shall not be entitled to special, consequential or punitive damages. Notwithstanding the foregoing, Buyer retains all remedies at law and in equity with respect to Seller's obligation to complete the Home within two (2) years pursuant to Section 9 above.

17. **Mediation / Arbitration of Disputes**.

17.1 The parties to this Agreement specifically agree that this transaction involves interstate commerce and that any Dispute (as hereinafter defined) shall first be submitted to mediation and, if not settled during mediation, shall thereafter be submitted to binding arbitration as provided by the Federal Arbitration Act (9 U.S.C. §§1 et seq.) and not by or in a court of law or equity. "**Disputes**" (whether contract, warranty, tort, statutory or otherwise), shall include, but are not limited to, any and all controversies, disputes or claims (1) arising under, or related to, this Agreement, the Property, the Community or any dealings between Buyer and Seller; (2) arising by virtue of any representations, promises or warranties alleged to have been made by Seller or Seller's representative; (3) relating to personal injury or property damage alleged to have been sustained by Buyer, Buyer's children or other occupants of the Property, or in the Community; or (4) issues of formation, validity or enforceability of this Section. Buyer has executed this Agreement on behalf of his or her children and other occupants of the Property with the intent that all such parties be bound hereby. Any Dispute shall be submitted for binding arbitration within a reasonable time after such Dispute has arisen. Nothing herein shall extend the time period by which a claim or cause of action may be asserted under the applicable statute of limitations or statute of repose, and in no event shall the Dispute be submitted for arbitration after the date when institution of a legal or equitable proceeding based on the underlying claims in such Dispute would be barred by the applicable statute of limitations or statute of repose.

17.2 Any and all mediations commenced by any of the parties to this Agreement shall be filed with and administered by the American Arbitration Association or any successor thereto ("**AAA**") in accordance with the AAA's Home Construction Mediation Procedures in effect on the date of the request. If there are no Home Construction Mediation Procedures currently in effect, then the AAA's Construction Industry Mediation Rules in effect on the date of such request shall be utilized. Any party who will be relying upon an expert report or repair estimate at the mediation shall provide the mediator and the other parties with a copy of the reports. If one or more issues directly or indirectly relate to alleged deficiencies in design, materials or construction, all parties and their experts shall be allowed to inspect, document (by photograph, videotape or otherwise) and test the alleged deficiencies prior to mediation. Unless mutually waived in writing by the parties, submission to mediation is a condition precedent to either party taking further action with regard to any matter covered hereunder.

17.3 If the Dispute is not fully resolved by mediation, the Dispute shall be submitted to binding arbitration and administered by the AAA in accordance with the AAA's Home Construction Arbitration Rules in effect on the date of the request. If there are no Home Construction Arbitration Rules currently in effect, then the AAA's Construction Industry Arbitration Rules in effect on the date of such request shall be utilized. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Dispute. If the claimed amount exceeds $250,000.00 or includes a demand for punitive damages, the Dispute shall be heard and determined by three arbitrators; however, if mutually agreed to by the parties, then the Dispute shall be heard and determined by one arbitrator. Arbitrators shall have expertise in the area(s) of Dispute, which may include legal expertise if legal issues are involved. All decisions respecting the arbitrability of any Dispute shall be decided by the arbitrator(s). At the request of any party, the award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

17.4 The waiver or invalidity of any portion of this Section shall not affect the validity or enforceability of the remaining portions of this Section. Buyer and Seller further agree (1) that any Dispute involving Seller's affiliates, directors, officers, employees and agents shall also be subject to mediation and arbitration as set forth herein, and shall not be pursued in a court of law or equity; (2) that Seller may, at its sole election, include Seller's contractors, subcontractors and suppliers, as well as any warranty company and insurer as parties in the mediation and arbitration; and (3) that the mediation and arbitration will be limited to the parties specified herein.

17.5 To the fullest extent permitted by applicable law, Buyer and Seller agree that no finding or stipulation of fact, no conclusion of law, and no arbitration award in any other arbitration, judicial, or similar proceeding shall be given preclusive or collateral estoppel effect in any arbitration hereunder unless there is mutuality of parties. In addition, Buyer and Seller further agree that no finding or stipulation of fact, no conclusion of law, and no arbitration award in any arbitration hereunder shall be given preclusive or collateral estoppel effect in any other arbitration, judicial, or similar proceeding unless there is mutuality of parties.

17.6 Unless otherwise recoverable by law or statute, each party shall bear its own costs and expenses, including attorneys' fees and paraprofessional fees, for any mediation and arbitration. Notwithstanding the foregoing, if a party unsuccessfully contests the validity or scope of arbitration in a court of law or equity, the noncontesting party shall be awarded reasonable attorneys' fees, paraprofessional fees and expenses incurred in defending such contest, including such fees and costs associated with any appellate proceedings. In addition, if a party fails to abide by the terms of a mediation settlement or arbitration award, the other party shall be awarded reasonable attorneys' fees, paraprofessional fees and expenses incurred in enforcing such settlement or award.

17.7 Buyer may obtain additional information concerning the rules of the AAA by visiting its website at www.adr.org or by writing the AAA at 335 Madison Avenue, New York, New York 10017.

17.8 Seller supports the principles set forth in the Consumer Due Process Protocol developed by the National Consumer Dispute Advisory Committee and agrees to the following:

17.8.1 Notwithstanding the requirements of arbitration stated in Section 17.3 of this Agreement, Buyer shall have the option, after pursuing mediation as provided herein, to seek relief in a small claims court for disputes or claims within the scope of the court's jurisdiction in lieu of proceeding to arbitration. This option does not apply to any appeal from a decision by a small claims court.

17.8.2 Any mediator and associated administrative fees incurred shall be shared equally by Seller and Buyer; however, Seller and Buyer each agree to pay for their own attorneys' fees and costs.

17.8.3 The fees for any claim pursued via arbitration shall be apportioned as provided in the Home Construction Arbitration Rules of the AAA or other applicable rules.

17.9 Notwithstanding the foregoing, if either Seller or Buyer seeks injunctive relief, and not monetary damages, from a court because irreparable damage or harm would otherwise be suffered by either party before mediation or arbitration could be conducted, such actions shall not be interpreted to indicate that either party has waived the right to mediate or arbitrate. The right to mediate and arbitrate should also not be considered waived by the filing of a counterclaim by either party once a claim for injunctive relief had been filed with a court.

17.10 BUYER AND SELLER AGREE THAT THE PARTIES MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR COLLECTIVE PROCEEDING. THE ARBITRATOR(S) MAY NOT CONSOLIDATE OR JOIN CLAIMS REGARDING MORE THAN ONE PROPERTY AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR(S) MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT BE AWARDED ON CLASS-WIDE OR MASS-PARTY BASIS OR OTHERWISE AFFECT PARTIES WHO ARE NOT A PARTY TO THE ARBITRATION. NOTHING IN THE FOREGOING PREVENTS SELLER FROM EXERCISING ITS RIGHT TO INCLUDE IN THE MEDIATION AND ARBITRATION THOSE PERSONS OR ENTITIES REFERRED TO IN SECTION 17.4 ABOVE.

18. **Other Dispute Resolutions**. Notwithstanding the parties' obligation to submit any Dispute to mediation and arbitration, in the event that a particular dispute is not subject to the mediation or the arbitration provisions of Section 17, then the parties agree to the following provisions: **BUYER ACKNOWLEDGES THAT JUSTICE WILL BEST BE SERVED IF ISSUES REGARDING THIS AGREEMENT ARE HEARD BY A JUDGE IN A COURT PROCEEDING, AND NOT A JURY. BUYER AND SELLER AGREE THAT ANY DISPUTE, CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE HEARD BY A JUDGE IN A COURT PROCEEDING AND NOT A JURY. BUYER AND SELLER HEREBY WAIVE THEIR RESPECTIVE RIGHT TO A JURY TRIAL. SELLER HEREBY SUGGESTS THAT BUYER CONTACT AN ATTORNEY OF BUYER'S CHOICE IF BUYER DOES NOT UNDERSTAND THE LEGAL CONSEQUENCES OF EXECUTING THIS AGREEMENT.**

19. **Deed Restriction**. The provisions of Sections 17 and 18 shall be: (i) subject to the survival provisions of Section 31, (ii) covenants running with the land comprising the Property, (iii) set forth as exceptions in the Deed, and (iv) binding upon Buyer and its successors and assigns in title upon Seller's conveyance of the Property to Buyer and recording of the Deed.

20. **Selling Agent, Cooperating Broker, and Seller's New Home Consultant**. Unless the Purchase Price and Payment Addendum attached hereto indicates otherwise, Buyer represents to Seller that Buyer has not consulted, dealt or negotiated with a real estate broker, salesperson or agent other than Seller's sales personnel located at Seller's sales office. Buyer agrees that Seller is not responsible for the payment of a commission to a real estate broker, salesperson or agent other than Seller's sales personnel. Buyer shall indemnify, defend and hold harmless Indemnified Parties from and against any and all Claims resulting from or arising out of any representation or breach of a representation or warranty set forth in this Section. In addition, Buyer acknowledges and understands that Seller's New Home Consultant ("**NHC**") and Internet New Home Consultant ("**INHC**") are employees of Seller, are acting solely for the Seller's interests, and are not acting in any representative capacity for Buyer. Buyer should not disclose any information to Seller's NHC and/or INHC that Buyer considers to be confidential or otherwise does not want disclosed to Seller.

21. **Construction Activities**. ALL OWNERS, OCCUPANTS AND USERS OF THE COMMUNITY ARE HEREBY PLACED ON NOTICE THAT (1) SELLER AND/OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES, AND/OR (2) ANY OTHER PARTIES, WILL BE, FROM TIME TO TIME, CONDUCTING BLASTING, EXCAVATION, CONSTRUCTION AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO THE COMMUNITY. BY THE ACCEPTANCE OF THEIR DEED OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF THE COMMUNITY, EACH SUCH OWNER, OCCUPANT AND USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES (1) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY, (2) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO THE AREA OF THE COMMUNITY WHERE SUCH ACTIVITY IS BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS), (3) TO THE EXTENT PERMITTED OR NOT PROHIBITED UNDER APPLICABLE LAW, SELLER AND THE OTHER AFORESAID RELATED PARTIES SHALL NOT BE LIABLE FOR ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES, EXCEPT RESULTING DIRECTLY FROM SELLER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (4) ANY PURCHASE OR USE OF ANY PORTION OF THE COMMUNITY HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING AND (5) THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO SELL, CONVEY, AND/OR ALLOW THE

USE OF THE PROPERTY.

22. **Dangerous Condition; Construction Work**.

22.1 Buyer understands and agrees that the Property is a construction site and that the Property and the improvements, equipment and supplies thereon constitute a danger to those who may enter on the Property. Buyer shall not enter onto the Property prior to Closing unless authorized and accompanied by Seller's representative. Any unauthorized, unaccompanied entry by Buyer shall constitute a breach of this Agreement by Buyer, at Seller's election. Moreover, any entry by Buyer onto the Property prior to Closing shall be done at Buyer's own risk and in compliance with all federal, state and local safety laws and regulations. To the extent permitted or not prohibited by applicable law, Buyer waives, releases and shall indemnify, defend and hold harmless Indemnified Parties from and against any Claims made by Buyer, Buyer's family members or guests, as a direct or indirect result of any such unauthorized, unaccompanied entry onto the Property.

22.2 Buyer agrees that supervision and direction of the working forces, including, without limitation, all contractors and subcontractors, is to be done exclusively by Seller, and Buyer agrees not to issue any instructions to the working forces or otherwise hinder construction or installation of improvements on the Property. Buyer shall not do or have any work done on the Property, nor may Buyer store any possessions thereon, prior to Closing and transfer of title to the Property to Buyer.

22.3 Buyer agrees that any and all controversies, disputes and claims arising under this Section shall be resolved through mediation or binding arbitration in accordance with the terms of this Agreement.

23. **Natural Disasters**. Seller builds homes to the building code in effect at the time the building permit is applied for Buyer's Home. Building code requirements do not guarantee a home can or will withstand the impacts of a natural disaster; including but not limited to earthquake, forest fire, tornado, hurricane, flood, and avalanche. Seller cannot guarantee the home, its structure or features will not be impacted by a natural disaster. Buyer should review their applicable homeowner's and/or flood insurance policy(s) and consult their insurance professional for additional information. Buyer is urged to follow the advice and direction from local emergency management officials regarding a natural disaster.

Buyer understands and agrees to accept the risks and conditions of natural disasters and to assume all liabilities associated with them. By executing and delivering this Agreement and Closing, Buyer shall be deemed to have released Seller and Seller's affiliates, and their respective officers, directors, managers, members, shareholders, employees, and agents, from any and all liability or claims resulting from all matters disclosed or disclaimed in this Paragraph, including, without limitation, any liability for incidental or consequential damages which may result from, without limitation, inconvenience, displacement, property damage, personal injury and/or death to or suffered by Buyer or any of its family members, occupants, guests, tenants, invitees and/or pets and any other person or pet.

24. **Representation of Compliance with OFAC Regulations**. Buyer represents and warrants that Buyer is not barred from doing business with U.S. entities pursuant to the U.S. Department of Treasury's Office of Foreign Asset Control ("**OFAC**"), including OFAC's Specially-Designated-Nationals ("**SDN**") list and lists of known or suspected terrorist organizations. If Seller identifies or is informed that Buyer is a valid match for OFAC's SDN list, then this Agreement is void, and Seller shall cancel and revoke this Agreement immediately. In the event of cancellation or revocation of this Agreement under this provision, Seller shall immediately contact OFAC to report the transaction and to determine whether deposit money provided by Buyer, if any, should be returned or blocked, consistent with OFAC regulations.

25. **Agreement not to be Recorded**. Buyer covenants that Buyer shall not record this Agreement (or any memorandum thereof) in the Public Records of the County. Buyer agrees, if Buyer records this Agreement, to pay all of Seller's attorneys' fees, paraprofessional fees and expenses incurred in removing the cloud in title caused by such recordation. Seller's rights under this Section shall be in addition to Seller's remedies for Buyer's default provided elsewhere in this Agreement.

26. **Transfer, Assignment and Persons Bound**. Buyer agrees that Buyer will not, and does not have the right to, assign, sell or transfer Buyer's interest in this Agreement (whether voluntarily or by operation of law or otherwise) without Seller's prior written consent. If Buyer is a corporation, other business entity, trustee or nominee, a transfer of any material equity or beneficial or principal interest shall constitute an assignment of this Agreement. If Buyer attempts to assign this Agreement in violation of this Section, Seller can declare Buyer in default and Seller shall be entitled to all remedies available under this Agreement. Buyer agrees that Seller may withhold its consent with or without any reason or condition in any manner it chooses (if it gives it at all) and may charge Buyer a reasonable amount to cover administrative costs incurred in considering whether or not to grant consent. If Buyer dies or in any way loses legal control of his/her affairs, this Agreement will bind his/her heirs and legal representatives. If Buyer has received Seller's permission to assign or transfer this Agreement, then Buyer's approved assignees shall be bound by the terms of this Agreement. If more than one person signs this Agreement as Buyer, each such person shall be jointly and severally liable for full performance of all of Buyer's duties and obligations hereunder.

27. **Time of the Essence**. Buyer acknowledges that time is of the essence in connection with the transactions contemplated under this Agreement.

28. **Interpretation and Computation of Time**. The use of the masculine gender in this Agreement shall be deemed to refer to the feminine or neuter gender, and the singular shall include the plural, and vice versa, whenever the context so requires. This Agreement reflects the negotiated agreement of the parties. Each party acknowledges that they have been afforded the opportunity to seek competent legal counsel, and each has made an informed choice as to whether or not to be represented by legal counsel. Accordingly, this Agreement shall be construed as if both parties jointly prepared it, and no presumption against one party or the other shall govern the interpretation or construction of any of the provisions of this Agreement. Any reference in this Agreement to the time periods of less than five (5) days shall, in the computation thereof, exclude Saturdays, Sundays and legal holidays. Any reference in this Agreement to time periods of five (5) days or more shall, in computation thereof, include Saturdays, Sundays and legal holidays. If the last day of any such period is a Saturday, Sunday or legal holiday, the period shall be extended to 5:00 p.m. on the next full business day. The section headings in this Agreement are for convenience only and shall not affect the meaning, interpretation or scope of the provisions which follow them.

29. **Notice**. Except as provided in the Closing Section of this Agreement with respect to notices of the scheduled Closing Date, any

notice required or permitted to be given in connection with this Agreement shall be in writing and sent by United States certified mail with return receipt requested, overnight professional courier or electronic transmission (with confirmation and copy by (1) certified mail, if Buyer's address is within the United States or (2) overnight professional courier, if to a Buyer whose address is outside of the United States) to Buyer or Seller at the addresses on Page 2 of this Agreement (unless Seller has received written notice from Buyer of any change therein prior to the date such notice is given), and additionally to Seller by hand delivery at Seller's sales office. All notices shall only be effective upon receipt or refusal to accept receipt (by failure to accept delivery or otherwise).

30. **Waiver**. Seller's waiver of any of its rights or remedies shall not operate to waive any other of Seller's rights or remedies or to prevent Seller from enforcing the waived right or remedy in another instance.

31. **Survival**. Buyer and Seller specifically agree that notwithstanding anything to the contrary, the rights and obligations as set forth in all provisions and disclaimers in this Agreement shall survive (1) the Closing of the purchase of the Property; (2) the termination of this Agreement by either party; or (3) the default of this Agreement by either party, unless expressly stated otherwise. NOTWITHSTANDING THE FOREGOING, UPON CLOSING ALL CONTRACTED SERVICES TO BE PERFORMED UNDER THIS AGREEMENT BY SELLER SHALL BE DEEMED COMPLETED AND FULLY PERFORMED, AND THIS AGREEMENT SHALL BE DEEMED COMPLETED, WITHIN THE MEANING OF FLORIDA STATUTES § 95.11(3)(C). IN ADDITION, ALL PAYMENTS, INCLUDING, BUT NOT LIMITED TO, BUYER'S FINAL PAYMENT, TO SELLER FOR ALL CONTRACTED SERVICES ARE DUE ON OR BEFORE THE CLOSING DATE, AND CONTRACTED SERVICES SHALL NOT INCLUDE ANY CORRECTIONS OF DEFECTS OR DEFICIENCIES IN THE HOME, PUNCH LIST WORK, OR WARRANTY WORK.

32. **Incorporation and Severability**. The explanations and disclaimers set forth in the Documents are incorporated into this Agreement. In the event that any clause or provision of this Agreement shall be void or unenforceable, such clause or provision shall be deemed deleted so that the balance of this Agreement is enforceable.

33. **Governing Law**. Any disputes that develop under this Agreement or questions regarding the interpretation of this Agreement will be settled according to the law of the state where the Property is located to the extent federal law is not applicable.

34. **Entire Agreement**. BUYER CERTIFIES THAT BUYER HAS READ EVERY PROVISION OF THIS AGREEMENT, WHICH INCLUDES EACH RIDER AND ADDENDUM ATTACHED HERETO AND THAT THIS AGREEMENT, TOGETHER WITH EACH SUCH RIDER AND ADDENDUM, CONSTITUTES THE ENTIRE AGREEMENT BETWEEN BUYER AND SELLER. PRIOR AGREEMENTS, REPRESENTATIONS, UNDERSTANDINGS, AND ORAL STATEMENTS NOT REFLECTED IN THIS AGREEMENT HAVE NO EFFECT AND ARE NOT BINDING ON SELLER. BUYER ACKNOWLEDGES THAT BUYER HAS NOT RELIED ON ANY REPRESENTATIONS, NEWSPAPERS, RADIO OR TELEVISION ADVERTISEMENTS, WARRANTIES, STATEMENTS, OR ESTIMATES OF ANY NATURE WHATSOEVER, WHETHER WRITTEN OR ORAL, MADE BY SELLER, SALES PERSONS, AGENTS, OFFICERS, EMPLOYEES, COOPERATING BROKERS (IF ANY) OR OTHERWISE EXCEPT AS HEREIN SPECIFICALLY REPRESENTED. BUYER HAS BASED HIS/HER/THEIR DECISION TO PURCHASE THE PROPERTY ON PERSONAL INVESTIGATION, OBSERVATION AND THE DOCUMENTS.

35. **Modification**. This Agreement is the entire agreement for the sale and purchase of the Property and once it is signed by both Buyer and an authorized representative of Seller, it can only be amended by a written agreement signed by both Buyer and Seller.

36. **Additional Changes**. Notwithstanding Section 35 of this Agreement, Buyer agrees that it may be necessary (at any time and from time to time) after Buyer executes this Agreement for Seller, and/or the developer or declarant under the Documents, to change the terms and provisions of this Agreement and/or the Documents to comply with and conform to the rules and regulations (as same may exist and as same may be promulgated from time to time) of any governmental agency, subdivision or authority or court of competent jurisdiction and Buyer consents to all such changes. Notwithstanding Section 35 of this Agreement, Seller, and/or the developer or declarant under the Documents, shall have the right to amend all Documents for development or other purposes, and Buyer consents to all such amendments.

37. **Inducement**. Buyer acknowledges that the sole inducement to close on the purchase of the Property is the Property itself and not (1) the common facilities comprising part of the Community, if any, or (2) any expectation that the Property will increase in value.

38. **Reservation of Easement**. For the purpose of completing the construction and servicing of the Property and Community, Seller hereby reserves an easement of ingress and egress for itself and its successors and assigns, and each of their respective agents, employees, materialmen and subcontractors, over, under and upon the Property for a period of one (1) year after Closing. Seller shall provide reasonable notice to Buyer before exercising easement rights granted herein.

39. **Riders and Addenda**. This Agreement consists of 12 pages and the following Riders and Addenda, which are attached hereto and by this reference made a part of this Agreement.

Check ([X]) all that apply:

- [X] Rider A (Florida)
- [X] Rider B (Central Florida Division)
- [X] Purchase Price and Payment Addendum
- [X] Master Disclosure and Information Addendum
- [X] Affiliated Business Arrangement Disclosure Statement*
- [X] Election Form Addendum
- [X] Insulation Addendum
- [X] Indoor Environmental Quality Disclosure
- [X] Addendum for Natural and Manmade Products
- [ ] Sales Incentive Addendum
- [ ] HUD Receipt for Property Report [OPTIONAL]
- [X] Change Order Addendum/Amendment or Option Summary
- [X] Disclosure Summary
- [ ] Community Development District Brochure
- [X] Cooperating Broker Agreement
- [ ] FHA/VA Addendum
- [ ] Out of State Non-Solicitation Addendum (Multi-State)
- [ ] Out of State Non-Solicitation Addendum (New York)
- [ ] Out of State Non-Solicitation Addendum (New Jersey)
- [ ] Out of State Non-Solicitation Addendum (Puerto Rico)
- [X] Approved Lender Addendum [OPTIONAL]
- [X] Privacy Policy Notice Addendum
- [X] Stucco/Cementitious Finish to Exterior Walls Disclosure
- [X] N/A

*On 04/15/2023 Seller provided to Buyer an Affiliated Business Arrangement Disclosure Statement ("**ABAD**") that sets forth Seller's business relationships with affiliated settlement service providers, including but not limited to, Lennar Mortgage, LLC, Lennar Title Inc. Lennar Insurance Agency, LLC and their respective types of charges and range of charges; Buyer acknowledges and confirms receipt of the previously delivered ABAD on 04/15/2023.

40. **Offer to Purchase/Effective Date**. This Agreement, when executed by Buyer and delivered to Seller, together with the Initial Deposit specified hereunder, shall constitute an offer by Buyer to purchase the Property in accordance with the terms and conditions provided herein, and shall not be binding upon Seller until such time as an authorized representative of Seller has executed this Agreement. The date of such acceptance is the "**Effective Date**" of this Agreement. In the event Buyer's offer is not accepted by Seller, all paid Deposits made by Buyer to Seller to date shall be returned to Buyer, and Buyer's offer shall be deemed withdrawn.

41. **Counterparts and Signatures**. This Agreement may be executed in any number of counterparts, a complete set of which shall be deemed to be an original and a complete set of which shall comprise but a single instrument. Signatures may be given via electronic transmission and shall be deemed given as of the date and time of the transmission of this Agreement to the other party.

42. **DISTRICT**. Pursuant to Section 190.048 of Florida Statutes, Seller provides the following notice. **THE N/A COMMUNITY DEVELOPMENT DISTRICT MAY IMPOSE AND LEVY TAXES OR ASSESSMENTS, OR BOTH TAXES AND ASSESSMENTS, ON THIS PROPERTY. THESE TAXES AND ASSESSMENTS PAY THE CONSTRUCTION, OPERATION, AND MAINTENANCE COSTS OF CERTAIN PUBLIC FACILITIES AND SERVICES OF THE DISTRICT AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF THE DISTRICT. THESE TAXES AND ASSESSMENTS ARE IN addition TO COUNTY AND OTHER LOCAL GOVERNMENTAL TAXES AND ASSESSMENTS AND ALL OTHER TAXES AND ASSESSMENTS PROVIDED FOR BY LAW.**

THE INITIAL DEPOSIT HAS BEEN RECEIVED BY SELLER SUBJECT TO CLEARANCE.

SELLER: LENNAR HOMES LLC

DocuSigned by:
Fang Cook
2638A835D207457...
New Home Consultant Fang Cook
Date: 4/19/2023

THIS AGREEMENT IS NOT BINDING ON SELLER UNTIL ACCEPTED BELOW BY AN AUTHORIZED REPRESENTATIVE OF SELLER.

SELLER:
LENNAR HOMES LLC
a

DocuSigned by:
Fang Cook
2638A835D207457...
By
Title: Authorized Representative Fang Cook
Date Signed by Seller: 4/19/2023

DocuSigned by:
Zhiming Xu
CAC82956A81D4B9...
Buyer - Zhiming Xu
Date 4/15/2023

DocuSigned by:
Tao Li
11401E832A194E7...
Buyer - Tao Li
Date 4/15/2023

Buyer -
Date

Buyer -
Date

PRIVACY POLICY NOTICE ADDENDUM

THIS PRIVACY POLICY NOTICE ADDENDUM (this "**Addendum**") is, by this reference, made part of the Purchase and Sale Agreement (the "**Agreement**") dated as of the fifteenth day of April, 2023 between Zhiming Xu, Tao Li (collectively, "**Buyer**") and Seller, as defined in the Agreement, respecting Lot 5400 of Block _____ of Storey Grove Subdivision/Plat/Condominium in the community known as Storey Grove 50 (the "**Community**").

1. **Defined Terms**. All initially capitalized terms not defined herein shall have the meanings set forth in the Agreement, and all references in this Addendum to the Agreement shall be deemed to include references to this Addendum and to any other addenda and riders attached to the Agreement, which are hereby incorporated by this reference. Notwithstanding the foregoing or anything contained in the Agreement to the contrary, for the exclusive purpose of this Addendum, "**Lennar Affiliate(s)**" shall have the meaning set forth in the Privacy Policy Summary attached hereto as Exhibit "A" ("**Privacy Policy Summary**").

2. **Explanation**. Buyer may need a mortgage, homeowners' insurance, title insurance and/or settlement services in connection with the purchase of the Home. While Buyer is not required to use a Lennar Affiliate to purchase such services, they are available to assist with obtaining these services in connection with the purchase of the Home. This Addendum provides Buyer with the option of electing to receive marketing materials, including price quotes, for services that may be necessary in connection with the purchase of the new Home. It is entirely Buyer's choice whether to receive any such information, and there is no obligation to use any Lennar Affiliate.

3. **Privacy Summary**. Buyer acknowledges that Buyer has received and reviewed Seller's Privacy Policy Summary and has been given the opportunity to review Seller's complete Privacy Policy at https://www.lennar.com/privacypolicy, or on request. Buyer hereby accepts the Privacy Policy and acknowledges that the Privacy Policy is subject to future amendment.

4. **Privacy Selections**. Please choose the "Yes" or "No" options below to indicate whether Buyer wishes to share information with Lennar Affiliates (such as those involved in the home purchasing process, e.g., Lennar Mortgage, LLC, Lennar Title, Inc., CalAtlantic Title, LLC and Lennar Insurance Agency, LLC). If there is more than one Buyer, the choices selected on the Addendum will apply to all Buyers who have executed the Addendum.

YES	NO	
_____	X	**Affiliate Information Sharing**: Agreeing to this option will allow the Lennar Affiliates to provide Buyer with offers and information about products and services that may be necessary in connection with the home-buying process by accessing and using Buyer's personal information. These services include providing the Buyer with home financing information and quotes for title insurance, closing services and homeowner's insurance.

Buyer may change the above selections (i.e., opt-out if Buyer has previously selected "YES", or opt-in, if Buyer has previously selected "NO") at any time by visiting www.lennar.com/contact/communicationpreferences and making the appropriate selections in the manner prescribed in the form, or as otherwise described in the current Privacy Policy.

5. **Counterparts**. This Addendum shall be validly executed when signed in counterpart; a complete set of which shall form a single document. Signatures may be given via electronic transmission and shall be deemed original and given as of the date and time of the transmission of this Addendum electronically to the other party.

6. **Conflicts**. In the event of any conflict between this Addendum and the Agreement, this Addendum shall control. In all other respects, the Agreement shall remain in full force and effect.

7. **Entire Agreement**. The Agreement, together with this Addendum and any other addenda and riders to the Agreement, contains the entire agreement between Buyer and Seller concerning the matters set forth herein. No addition or modification of this Addendum or the Agreement shall be effective unless set forth in writing and signed by Buyer and an authorized representative of Seller.

DocuSigned by:
Zhiming Xu
CAC82956A81D4E8...
Buyer - Zhiming Xu
Date 4/15/2023

DocuSigned by:
Tao Li
11401E632A194E7...
Buyer - Tao Li
Date 4/15/2023

Buyer -
Date

Buyer -
Date

SELLER:
LENNAR HOMES LLC
a

DocuSigned by:
Fang Cook
2638A835D207457...
By:
Title: Authorized Representative
Fang Cook
Date Signed by Seller: 4/19/2023

EXHIBIT "A"

PRIVACY POLICY SUMMARY

This Privacy Policy Summary summarizes certain terms of the Privacy Policy of Lennar Corporation ("Privacy Policy") and our affiliated companies (collectively, "Lennar," "we", "us", "our") collect, use and disclose personal information about visitors to our websites, users of our mobile applications, people we meet in person or by phone, our customers and prospective customers, and others whose personal information we collect and retain ("you," "your," or "our"). Please review the full text of our Privacy Policy at https://www.lennar.com/privacypolicy, or contact us as explained below.

Lennar Affiliates include (among others) Lennar Corporation and all affiliated companies, including but not limited to: the Quarterra Multifamily Communities, LLC, Lennar Commercial, Lennar International, LLC, CalAtlantic Group, LLC, Lennar Mortgage, LLC, CalAtlantic Mortgage, Inc., Lennar Sales Corp., North American Title Insurance Company, LLC, Lennar Title, Inc., Lennar Title, LLC, Lennar Title Group, LLC, Lennar Closing Services, CalAtlantic Title, LLC, CalAtlantic National Title Solutions, LLC, Five Point Communities, WCI Communities, LLC, and Lennar Insurance Agency, LLC (collectively "Lennar Affiliates").

You consent to the terms of our Privacy Policy when you use our online services or provide your personal information to us after receiving this Privacy Policy Summary and an opportunity to review our complete Privacy Policy.

"Personal information" refers to information that identifies you or relates to you as an identifiable individual (such as your name, email address, government-issued identification numbers, Internet Protocol address); consumer information (e.g., telephone number, credit card and bank account numbers); commercial activity records (e.g., credit reports, purchasing history, other Lennar transactions); internet browsing history and other online usage; and geolocation data. Personal information may also include information that does not identify you directly if it is combined with other information in a way that enables you to be identified (such as age, gender, profession, zip code, IP address, mobile device ID, and geolocation data).

Lennar Affiliates use Personal Information for the business and commercial purposes summarized below, but our use of your information is subject to the terms of the Privacy Policy; any specific terms applicable to the services or products you request; your instructions to us that limit the use of certain information when you exercise an "opt-in" or "opt-out" or "unsubscribe" option we provide; and/or the requirements of applicable law. Subject to those limitations, Lennar may use your personal information in the following ways:

1. Establish, maintain, and service customer accounts; provide customer service; provide financing, title, insurance or other home-purchase related services through Lennar Affiliates, engage in advertising, marketing, and online analytic services.

2. Process payment information for transactions with Lennar (although we will not retain your credit card information).

3. Requesting feedback on the customer's experience and offering products and services in the future.

4. Maintain records of our customers' needs, preferences and interests so that we may assist customers to identify properties and services provided by Lennar and letting them know about services or promotions that may be of interest to them (which may in some cases be provided by Lennar Affiliates or Business Associates), including by email, mail, telephone, or SMS text message. These are marketing messages and you are able to control whether you receive them. To learn how you can choose to stop receiving some or all of these messages, see the section titled "Opt-In/Opt-Out Procedures."

5. Undertake activities to maintain the quality of Lennar products and services and to improve, upgrade, and enhance those products and services.

6. Manage our online services to maintain functionality, improve service, detect and prevent malicious activity.

7. Develop demographic information for statistical and market research and other strategic marketing purposes.

8. Permit third party advertisers and ad servers to deliver Lennar advertisements to you on other websites you visit as explained herein. This includes, for example, verifying positioning and quality of ad impressions, and auditing compliance with marketing specifications and standards. If you prefer not to receive this form of advertising, see "How We Use and How You Can Limit Use of Cookies and Interest-Based Advertising."

9. Market our products and services through our websites, e-mail messaging, online advertising, and offline means.

10. Manage our contractual relations, protect our business interests, enforce our terms and conditions (https://www.lennar.com/termsandconditions).

11. Comply with applicable law and legal process.

12. Undertake a major business transaction subject to appropriate confidentiality protections.

We share or permit access to personal information to our "Service Providers" and "Business Associates" (collectively, "Third Parties"). Service Providers assist us with administrative, technology, data storage, e-mail

services, marketing, and other business operations and may not sell or use personal information from these services for their own purposes. Business Associates are unaffiliated companies we may collaborate with in the homebuilding process or who offer products and services for the home or Community. Business Associates may use personal information for their own commercial purposes, such as marketing products and services related to your new home and may provide monetary or other consideration for access to personal information. When information is sold or exchanged for value, the Third Parties may use the personal information for their own direct marketing or other commercial purposes.

The chart below shows the categories of personal information Lennar disclosed for a business purpose to Service Providers or sold/exchanged with Third Parties during the past 12 months.

Categories of Personal Information Collected in Past 12 Months	**Sources**	**Availability to Lennar Affiliates; Sale/Exchange with Business Associates; Your Opt-in or Opt-out Rights***
Contact information: name, postal address, email address, and telephone number	o Your request for information (online or offline) o Your application for home purchase, mortgage, insurance, or other transaction o Lennar Affiliate o Business Associates o Marketing research services	Lennar Affiliates* with prior affirmative consent to use for customer lead generation, direct marketing; market research services; Business Associates for customer lead generation, direct marketing; market research services**
Personal identifiers: Social security number, government-issued identification number, driver's license and passport number	o Your application for home purchase, mortgage, insurance, or other transaction information	Not shared with Lennar Affiliates or any Third Parties
Consumer information: Credit/debit card and bank or other financial account numbers	You (as necessary to complete a transaction)	Not shared with Lennar Affiliates or any Third Parties
Commercial information: o Credit reports, purchasing history, public real estate and lien records o Lennar Affiliate transaction history, transaction contract and closing document information.	o Credit reporting agencies o Public records o Lennar Affiliates	o Shared with Lennar Affiliates* with your consent; o Not shared with Business Associates

Other financial information: income, assets, liabilities, salary and employer information.	o Your application for home purchase, mortgage, insurance, or other transaction o Lennar Affiliate	o Shared with Lennar Affiliates* with your consent o Not shared with Business Associates
Internet and other electronic network activity: o Internet protocol address, mobile device identifier o Browsing history o Interactions with our websites (such as photos and comments you post)	o Cookies and other internet tracking technologies used on our websites and myLennar Account o E-mail messages	Website analytics and online advertising services that collect website data***
Geolocation data	o Your IP address and mobile device identifier o Specific location data you provide	Business Associates for lead generation, direct marketing and market research services
Interested Buyer or Home-Buyer Profile: name, email and/or street address, new home and location interests and preferences; new street address, Lennar community, gender, family members, details about your home purchase, and anticipated closing date; blog comments; photos	o You o Your social media accounts if you provide access**	May be shared with Lennar Affiliates and Business Associates for lead generation, direct marketing and market research services **Opt-out at**: https://www.lennar.com/contact/CommunicationPreferences or by e-mail at privacyinfo@lennar.com

*You may change your selection at any time at https://www.lennar.com/contact/CommunicationPreferences or by contacting as explained below. You cannot opt-out of disclosures to Service Providers because they perform business services on behalf of Lennar Affiliates and do not use personal information for their own commercial purposes.

**Business Associates and social media sites are responsible for their own privacy practices, which should be described in their privacy policies and accessible from their marketing communications, websites, or mobile applications.

***You can restrict the automated collection of your online usage data and receipt of personalized ads by managing the preference settings on your browser or device.

Other reasons for sharing personal information.
Except as otherwise provided in this Privacy Policy, we may share or disclose personal information to other third parties for the following reasons:

- o To third parties to whom you or authorize us to disclose your personal information.
- o To enforce our contracts and the Terms and Conditions applicable to the use of the Websites.
- o To fulfill your requests including connecting with your social media accounts.
- o To comply with laws or valid legal process and in response to appropriate governmental requests.
- o As we deem reasonably necessary to investigate, prevent or take other appropriate action in connection with potential illegal or fraudulent activities or potential risk to the personal safety of any individual or the security of your personal information.
- o As we deem reasonably necessary to in connection with a major business transaction subject to appropriate confidentiality protections.

Information Sharing with Lennar Affiliates - Your Privacy Rights Under the Fair Credit Reporting Act

Under Federal law, we are permitted to share information about our own transactions and experiences with you with Lennar Affiliates. However, federal law gives you the right to limit our ability to share information about your

creditworthiness or for marketing purposes with Lennar Affiliates.

Notice of Your Ability to Limit Sharing of Creditworthiness Information with Lennar Affiliates. Information about your creditworthiness includes, for example, your income, assets, and other liabilities that you provide to us or that we obtain from a consumer credit report. We will not share your information about your creditworthiness with Lennar Affiliates.

Notice of Your Choice to Limit Marketing by Lennar Affiliates. You may limit Lennar Affiliates, such as our mortgage lender or broker and insurance affiliates, from marketing their products or services to you based on personal information that we collect from you and share with them. The types of information we might share with Lennar Affiliates for their marketing purposes include your income, account history, and credit history. You can limit marketing offers from Lennar Affiliates, by visiting https://www.lennar.com/contact/CommunicationPreferences or contacting us by e-mail at privacyinfo@lennar.com. You may change your selections at any time by visiting that webpage.

Opt-In / Opt-Out Procedures

In the process of purchasing a Lennar home, you may be interested in receiving information about a variety of related products and services including, but not limited to, home loan, title and homeowner's insurance, security services, and community resource such as telecommunications services and local merchants. When you provide us with your contact information, you will be asked to consent to authorize us to share your personal information with Lennar Affiliates and/or Business Associates to market services relating to the purchase of a home to you. You may change your selection at any time by visiting: https://www.lennar.com/contact/CommunicationPreferences.

(Note that you cannot opt-out of disclosures to Service Providers because they perform business services on behalf of Lennar and do not use personal information for their own commercial purposes). If you would like to restrict the automated collection of your personal information while using our websites, mobile apps, and other online services "Online Services"), see the section titled, "How We Use and How You Can Limit Cookies and Interest-Based."

How We Use and How You Can Limit Cookies and Interest-Based Advertising

We use cookies and similar technologies on our Online Services all as more particularly provided in the Privacy Policy. We may engage third parties, such as Google Analytics, to collect activity and usage data. To learn more about how Google collects and processes data and the choices Google may offer to control these activities, you may visit: http://www.google.com/intl/en/policies/privacy/partners/. We may use third-party advertising companies t serve ads when you visit our Online Services all as provided in the Privacy Policy.

Protecting and Retention of Personal Information

Lennar maintains administrative, technical and physical safeguards to protect the security, confidentiality, and integrity of your personal information appropriate to the nature of the personal information we collect. While the measures we implement are intended to reduce the likelihood of security problems, we cannot guarantee that these measures will prevent unauthorized access to your personal information. We retain personal information for as long as we reasonably require it for legal or business purposes.

Rights of California Residents - This section applies only to residents of the State of California.
California Consumers have the rights described at: https://www.lennar.com/privacypolicy#ForCaliforniaConsumers.
The rights of California consumers include (among others):

- To direct Lennar Affiliates not to sell their personal information to others ("Right to Opt-Out");
- To know what personal information Lennar Affiliates collected, sold, or disclosed about the consumer or the consumer's household during the last twelve (12) months; and
- To request that Lennar delete personal information that Lennar has collected, subject to a range of exclusions permitted by law.

Right to Opt-Out. California consumers have the right to direct a business not to sell their personal information to others ("Right to Opt-Out"). You can exercise your Right to Opt-Out by submitting the webform: https://www.lennar.com/contact/CommunicationPreferences. You may also exercise your Right to Opt-Out by contacting us as described below. Our webform provides several options. You may opt-out of all sales of your personal information regardless of the purpose or category of third party involved. Or, you may opt-in to allow only sales to Lennar Affiliates and/or Business Associates to permit them to market their products and services to you.

Nevada residents may opt-out of the sale of personal information by contacting us as explained below.

Contact us with your questions about this Privacy Policy or our privacy practices or to change opt-in or opt-out preferences:

By email:	privacyinfo@lennar.com
By phone:	1-800-532-6993
Online Preferences webform:	https://www.lennar.com/contact/CommunicationPreferences
By postal mail:	5505 Blue Lagoon Drive, Miami, FL 33126 (Attn: Privacy Compliance Dept.)

PURCHASE PRICE AND PAYMENT ADDENDUM

Buyer(s) Name: Zhiming Xu, Tao Li
Date of Agreement: 04/15/2023
Community: Storey Grove 50 Lot/Block: [redacted] /
Address: [redacted] Winter Garden FL 34787
Plan/Elevation: Simmitano / J Garage Orientation Preference: Left ☐ Right ☒
Phase/Section: Job#/Unit Type/Model#: 7116725400
Started (Y/N): Y Stage: 02
Estimated Start Date: 04/06/2023
NHC: Fang Cook ISC:
Agreement Type: ☒ Primary ☐ Secondary ☐ Investment
Select One: ☒ New Agreement ☐ Transfer ☐ Revised Agreement -- Revision #:

BUYER(S) INFORMATION

Buyer #1: Zhiming Xu (check one): Married ☒ Single ☐
Buyer #1 Existing Address: [redacted] Winter Garden FL / US 34787
Home Phone: Office Phone: Cellular Phone: [redacted]
Email: [redacted]@gmail.com

Buyer #2: Tao Li (check one): Married ☒ Single ☐
Buyer #2 Existing Address: [redacted] Winter Garden FL / US 34787
Home Phone: Office Phone: Cellular Phone: [redacted]
Email: [redacted]@gmail.com

Buyer #3: (check one): Married ☐ Single ☐
Buyer #3 Existing Address:
Home Phone: Office Phone: Cellular Phone:
Email:

Buyer #4: (check one): Married ☐ Single ☐
Buyer #4 Existing Address:
Home Phone: Office Phone: Cellular Phone:
Email:

PURCHASE PRICE AND PAYMENTS

PURCHASE PRICE:

Base Purchase Price:	$ 582,490.00
Add: Homesite Premium:	$ 16,000.00
Add: Options, Upgrades and Extras per Change Order Summary:	$ 15,010.00
Total Purchase Price:	$ 613,500.00

PAYMENTS:

Initial Deposit ..... Check# $ 30,675.00

Additional Deposit

Due ____ Received ____ Check# ____ $ .00
Due ____ Received ____ Check# ____ $ .00
Due ____ Received ____ Check# ____ $ .00
Due ____ Received ____ Check# ____ $ .00

Advanced Payment for Options, Extras and/or Upgrades

Due ____ Received ____ Check# ____ $ .00
Due ____ Received ____ Check# ____ $ .00

Total Payments: $ 30,675.00

Amount to be financed or paid by wire transfer of immediately available funds at closing (approximate) $ 582,825.00
(Total Purchase Price less total payments does not include FHA Funding Fee, VA Funding Fee, MIP, PMI, closing costs, pre-paids, homeowner insurance, prorated expenses, Builder's Fee, homeowners association fees and other fees).

CLOSING COSTS, PRE-PAIDS AND OTHER FEES:

Seller Assistance toward Settlement (subject to contribution limits and Lender approval, as applicable): $ 15,000.00
Buyer's closing costs, pre-paids and other fees associated with the purchase of the Home are described in the Rider B. If Buyer obtains financing for the Home, Buyer's closing costs, pre-paids and other fees associated with the financing of the Home are described in the Loan Estimate provided by the Lender.

WARRANTY INFORMATION

LEN 210 5/2/12
*Or other comparable warranty

FINANCING AND BROKER INFORMATION

Select One: ☐ Cash ☒ Conventional ☐ FHA ☐ VA ☐ OTHER:

Lender: HomeTown Lenders Phone #: 407-508-0973
Address: 1000 Legion PL, Suite 800, Orlando, FL 32801 Fax #: .
Agent Name: Rose Gibb Cellular #: [redacted]
Email Address: [redacted]@htlenders.com

Broker Participation? ☒ Yes ☐ No
Agent/Company: Tao Li / TOPSKY REALTY INC
Street Address: 7901 4th Street North, Suite 300
City, State Zip: St. Petersburg, FL 33702
Phone #: [redacted] Email Address: [redacted]@gmail.com
Fax #:
Sales Associate License No.: 3524036
Broker Tax ID#: 92-1748957 Broker Commission: $.00 or 3.00 % of Total Purchase Price less Seller Assistance if any.

Additional Broker Bonus/Incentive: $.00

Defined Terms. All initially capitalized terms not defined herein shall have the meanings set forth in the Purchase and Sale Agreement between Buyer and Seller dated as of the fifteenth day of April, 2023 (the "**Agreement**"), and all references in this Addendum to the Agreement shall be deemed to include references to this Addendum and to any other addenda and riders attached to the Agreement, which are hereby incorporated by this reference.

Counterparts. This Addendum shall be validly executed when signed in counterpart; a complete set of which shall form a single document. Signatures may be given via electronic transmission and shall be deemed original and given as of the date and time of the transmission of this Addendum electronically to the other party.

Conflicts. In the event of any conflict between this Addendum and the Agreement, this Addendum shall control. In all other respects, the Agreement shall remain in full force and effect.

Defined Terms. All initially capitalized terms not defined herein shall have the meanings set forth in the Purchase and Sale Agreement between Buyer and Seller dated as of the fifteenth day of April, 2023 (the "**Agreement**"), and all references in this Addendum to the Agreement shall be deemed to include references to this Addendum and to any other addenda and riders attached to the Agreement, which are hereby incorporated by this reference.

Counterparts. This Addendum shall be validly executed when signed in counterpart; a complete set of which shall form a single document. Signatures may be given via electronic transmission and shall be deemed original and given as of the date and time of the transmission of this Addendum electronically to the other party.

Conflicts. In the event of any conflict between this Addendum and the Agreement, this Addendum shall control. In all other respects, the Agreement shall remain in full force and effect.

Entire Agreement. The Agreement, together with this Addendum and any other addenda and riders to the Agreement, contains the entire agreement between Buyer and Seller concerning the matters set forth herein. No addition or modification of this Addendum or the Agreement shall be effective unless set forth in writing and signed by Buyer and an authorized representative of Seller.

DocuSigned by: Zhiming Xu
CAC82950A81D4B8...
Buyer - Zhiming Xu
Date 4/15/2023

DocuSigned by: Tao Li
11401E832A194E7...
Buyer - Tao Li
Date 4/15/2023

Buyer -
Date

Buyer -
Date

SELLER:
LENNAR HOMES LLC
a

By DocuSigned by: Fang Cook
2638A835D207457...
Title: Authorized Representative Fang Cook
Date Signed by Seller: 4/19/2023

Exhibit F

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

YIFAN SHEN, an individual, ZHIMING XU, an individual, XINXI WANG, an individual, YONGXIN LIU, an individual, and MULTI-CHOICE REALTY LLC, a limited liability corporation,

Plaintiffs,

v.

ASHLEY MOODY, in her official capacity as Attorney General of the State of Florida, WILTON SIMPSON, in his official capacity as Commissioner of Agriculture for the Florida Department of Agriculture and Consumer Affairs, MEREDITH IVEY, in her official capacity as Acting Secretary of the Florida Department of Economic Opportunity, PATRICIA FITZGERALD, in her official capacity as Chair of the Florida Real Estate Commission, R.J. LARIZZA, in his official capacity as State Attorney for the 7th Judicial Circuit, MONIQUE WORRELL, in her official capacity as State Attorney for the 9th Judicial Circuit, KATHERINE RUNDLE, in her official capacity as State Attorney for the 11th Judicial Circuit,

Defendants.

Case No. 4:23-cv-208-AW-MAF

DECLARATION OF XINXI WANG

I, Xinxi Wang, hereby declare as follows:

1. I am a plaintiff in the above-captioned action, and I make this declaration in support of Plaintiffs' Motion for a Preliminary Injunction, filed concurrently herewith. I have personal knowledge of the facts stated in this declaration, and if called to testify in this matter, I could and would competently testify to the facts contained herein.

A. Personal Background

2. I am a 29-year-old woman of Asian descent and Chinese ethnicity.

3. I am a citizen of the People's Republic of China.

4. I am neither a member of the Chinese government nor a member of the Chinese Communist Party.

5. I have lived in the United States since August 2017.

6. I am neither a United States citizen nor a permanent resident of the United States.

7. I currently have permission to stay and live in the United States as a holder of a valid F-1 visa, which is a nonimmigrant visa for international students.

8. I have not applied for permanent residency status in the United States.

9. I have lived in Florida since August 2017. Except for some recreational travel, I have continuously lived in Florida for the past five years.

10. In Florida, I live with my one-year daughter, who is a U.S. Citizen.

11. I am currently pursuing my Ph.D. degree in earth systems science at a university in Miami. My studies are focused on improving the ability to forecast hazardous weather formed from the ocean. In particular, the goal of my academic work is to help residents of coastal regions, especially people in Florida, survive coastal hazards, such as the landfalling of hurricanes, flooding, and extreme winds that can otherwise threaten the lives and health of coastal communities and habitats.

B. Property Interests in Florida

12. I am a homeowner; I own my current residence in Miami, Florida, where I have lived for more than five years.

13. The driving distance between my home and my lab at the university is only about ten minutes, which is one of the things I love about my current home.

C. Irreparable Harm Caused by Florida's New Alien Land Law

14. I learned about the new Florida law, which is the subject of this lawsuit, from people I know, as well as from news and media reports. I have read the new law, read articles about it, and discussed it with others to try to understand what it means.

15. Based on my understanding, two independent provisions of Florida's New Alien Land Law require me to register my current property with the Florida Department of Economic Opportunity because I am Chinese. One provision requires me to register because I own real estate in Florida and am from China. A second provision, which applies to people from China and six other countries, requires me to register because my property appears to be located within ten miles of a critical infrastructure facility.

16. These registration requirements are burdensome, discriminatory, and stigmatizing to me. I am very worried that this registration will be used to target me, discriminate against me, monitor me, and generally harass me as a Chinese homeowner.

17. I came to the United States to pursue education and opportunity offered in this country, but now I feel I am being targeted by the law simply because where I came from, my ancestry, and my alienage status. The law stigmatizes me and wrongly treats me as suspicious because I am Chinese, which is extremely distressing to me.

18. Before the new Florida law was passed, I had already experienced incidents of racial discrimination in Florida against me just because I am Chinese.

I am very fearful that my daughter and I will be subject to worsening racial hatred in Florida because the new law singles out Chinese people.

19. I am also very worried about my future ability to make another property purchase in Florida, even to move within the state by selling my current home and buying a new home in Florida. Even though the new law contains an exception allowing certain people to purchase one residential property up to two acres in size and not within five miles of a military installation, that exception does not apply to me as someone who currently owns real estate in Florida—and it is unclear if it would apply even if I were to sell my existing property. In addition, even if I become eligible for the exception after selling my current property, the new law is very unclear about the areas where I can legally purchase a home in Florida without risking criminal prosecution. It is extremely difficult to understand where I can safely purchase a property in the state because the definitions of "critical infrastructure" and "military installation" are ambiguous and very broad. I am very fearful that I could inadvertently purchase a home that violates the law and could be arrested and charged with a felony. If I were convicted, I could face up to five years in prison and a fine of $5,000, plus immigration consequences. On top of that, the property could be forfeited.

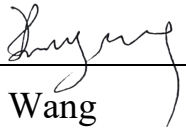
20. Relatedly, I am also very worried that I will be discriminated against by future sellers and real estate agents if I sell my current property and seek to purchase another home, because of their fear of the risk of violating the law and because I am Chinese. I believe that my search for real estate will be more costly, time-consuming, and burdensome under the new law because I am Chinese. The new law will cast a cloud of suspicion over me as a Chinese person.

21. With respect to the possible criminal sanctions for violating the law, even inadvertently, I am very worried about the impact that being incarcerated could have on my life. Not only would being incarcerated deprive me of my freedom and basic liberties, but it would interrupt my income, derail my academic

studies, and would certainly harm my family, especially, my daughter, who is only one-year old. I am also worried about the immigration consequences if I am criminally convicted and jailed.

I declare under penalty of perjury under the laws of the United States and the State of Florida that the foregoing is true and correct.

Executed this _fourth_ day of June, 2023.



Xinxi Wang

Exhibit G

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

YIFAN SHEN, an individual, ZHIMING XU, an individual, XINXI WANG, an individual, YONGXIN LIU, an individual, and MULTI-CHOICE REALTY LLC, a limited liability corporation,

Plaintiffs,

v.

ASHLEY MOODY, in her official capacity as Attorney General of the State of Florida, WILTON SIMPSON, in his official capacity as Commissioner of Agriculture for the Florida Department of Agriculture and Consumer Affairs, MEREDITH IVEY, in her official capacity as Acting Secretary of the Florida Department of Economic Opportunity, PATRICIA FITZGERALD, in her official capacity as Chair of the Florida Real Estate Commission, R.J. LARIZZA, in his official capacity as State Attorney for the 7th Judicial Circuit, MONIQUE WORRELL, in her official capacity as State Attorney for the 9th Judicial Circuit, KATHERINE RUNDLE, in her official capacity as State Attorney for the 11th Judicial Circuit,

Defendants.

Case No. 4:23-cv-208-AW-MAF

DECLARATION OF YONGXIN LIU

I, Yongxin Liu, hereby declare as follows:

1. I am a plaintiff in the above-captioned action, and I make this declaration in support of Plaintiffs' Motion for a Preliminary Injunction, filed concurrently herewith. I have personal knowledge of the facts stated in this declaration, and if called to testify in this matter, I could and would competently testify to the facts contained herein.

A. Personal Background

2. I am a 34-year-old man of Asian descent and Chinese ethnicity.

3. I am a native-born citizen of the People's Republic of China.

4. I am neither a member of the Chinese government nor a member of the Chinese Communist Party.

5. I have lived in the United States since August 2018.

6. I am neither a United States citizen nor a permanent resident of the United States.

7. I currently have permission to stay and live in the United States as a holder of a valid H-1B visa, which is a nonimmigrant worker visa.

8. I have not yet applied for permanent residency status in the United States, but I plan to do so and my hope is to remain in the United States.

9. I have lived in Florida since August 2018. Except for a nine-month period of time from August 2021 to May 2022, I have continuously lived in Florida for the past year and for a period of three years prior to that.

10. I am an assistant professor at a Florida university in the field of data science. I teach both undergraduate and graduate-level science courses, as well as courses on cybersecurity. I also conduct research, with the majority of my work focusing on fundamental technologies of interconnected domain of artificial intelligence and information security.

11. I am also part of the Institute of Electrical and Electronics Engineers

(IEEE), which is a prestigious global technical professional organization dedicated to advancing technology for the benefit of humanity. IEEE has chapters in Florida, and I am an active senior member.

B. Property Interests in Florida

12. I am a homeowner; I own my current residence in Daytona Beach, Florida, where I have lived for about nine months.

13. I am currently planning to purchase a second property in Pelican Bay, Florida as an investment property and vacation home for myself and my parents.

C. Irreparable Harm to Me Caused by Florida's New Alien Land Law

14. I am aware that Senate Bill 264 (hereinafter, "Florida's New Alien Land Law") was recently passed in Florida and signed into law on May 8, 2023, which is the subject of this lawsuit. I learned about the new law from people I know, as well as from news and media reports. I have read the new law, read articles about it, and discussed it with others to try to understand what it means.

15. Based on my understanding, two independent provisions of Florida's New Alien Land Law require me to register my current property with the Florida Department of Economic Opportunity because I am Chinese. One provision requires me to register because I own real estate in Florida and am from China. A second provision, which applies to people from China and six other countries, requires me to register because my property appears to be located within ten miles of a critical infrastructure facility.

16. These registration requirements are burdensome, discriminatory, and stigmatizing to me. I am very worried that this registration will be used to target me, discriminate against me, monitor me, and generally harass me as a Chinese homeowner.

17. I feel that as a Chinese person, I have been singled out and targeted by the law simply because of where I came from, my ancestry, and my alienage

status. The law stigmatizes me and wrongly treats me as suspicious because I am Chinese, which is extremely distressing to me.

18. Based on my understanding, Florida's New Alien Land Law will also prohibit me from purchasing the second property in Pelican Bay, Florida, that I planned to use as an investment property and vacation home for myself and my parents because I am Chinese. Because I currently own real estate in Florida and am from China, the law prohibits me from purchasing any additional property in the state after July 1, 2023, so I will be forced to abandon my planned purchase. I am extremely distressed at the prospect of never being able to purchase additional property in Florida.

19. In recent years, Chinese immigrants and Asian Americans in general have become targets of racial hatred and violence because of the rising tension between the United States and China. In the academic field, numerous Chinese American professors and scientists have been subject to unfair investigations and prosecutions by the federal government because of unfounded suspicion of illegitimate ties with the Chinese government. I fear that the new law in Florida will fan the flames of racial hatred against Chinese immigrants and Asian Americans in general.

20. I am also very worried about my future ability to make another property purchase in Florida, even to move within the state by selling my current home and buying a new home in Florida. Even though the new law contains an exception allowing certain people to purchase one residential property up to two acres in size and not within five miles of a military installation, that exception does not apply to me as someone who currently owns real estate in Florida—and it is unclear if it would apply even if I were to sell my existing property. In addition, even if I become eligible for the exception after selling my current property, the new law is very unclear about the areas where I can legally purchase a home in Florida without risking criminal prosecution. It is extremely difficult to

understand where I can safely purchase a property in the state because the definitions of "critical infrastructure" and "military installation" are ambiguous and very broad. I am very fearful that I could inadvertently purchase a home that violates the law and could be arrested and charged with a felony. If I were convicted, I could face up to five years in prison and a fine of $5,000, plus immigration consequences. On top of that, the property could be forfeited.

21. Relatedly, I am also very worried that I will be discriminated against by future sellers and real estate agents if I sell my property and seek to purchase another home, because of their fear of the risk of violating the law and because I am Chinese. I believe that my search for real estate will be more costly, time-consuming, and burdensome under the new law because I am Chinese. The new law will cast a cloud of suspicion over me as a Chinese person.

22. With respect to the possible criminal sanctions for violating the law, even inadvertently, I am very worried about the impact that being incarcerated could have on my life. Not only would being incarcerated deprive me of my freedom and basic liberties, but it would interrupt my income and destroy my career in academia.

I declare under penalty of perjury under the laws of the United States and the State of Florida that the foregoing is true and correct.

Executed this __5th__ day of June, 2023.

Yongxin Liu

Yongxin Liu

Exhibit H

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

YIFAN SHEN, an individual, ZHIMING XU, an individual, XINXI WANG, an individual, YONGXIN LIU, an individual, and MULTI-CHOICE REALTY LLC, a limited liability corporation,

Plaintiffs,

v.

ASHLEY MOODY, in her official capacity as Attorney General of the State of Florida, WILTON SIMPSON, in his official capacity as Commissioner of Agriculture for the Florida Department of Agriculture and Consumer Affairs, MEREDITH IVEY, in her official capacity as Acting Secretary of the Florida Department of Economic Opportunity, PATRICIA FITZGERALD, in her official capacity as Chair of the Florida Real Estate Commission, R.J. LARIZZA, in his official capacity as State Attorney for the 7th Judicial Circuit, MONIQUE WORRELL, in her official capacity as State Attorney for the 9th Judicial Circuit, KATHERINE RUNDLE, in her official capacity as State Attorney for the 11th Judicial Circuit,

Defendants.

Case No. 4:23-cv-208-AW-MAF

DECLARATION OF JIAN SONG

I, Jian Song, hereby declare as follows:

1. I am authorized on behalf of Multi-Choice Realty, LLC ("Multi-Choice Realty"), a plaintiff in the above-captioned action, to make this declaration in support of Plaintiffs' Motion for a Preliminary Injunction, filed concurrently herewith. I have personal knowledge of the facts stated in this declaration, and if called to testify in this matter, I could and would competently testify to the facts contained herein.

2. I am a naturalized citizen of the United States and have lived in Florida for the past 11 years with my wife and two children.

3. Multi-Choice Realty is a limited liability company organized under the laws of the State of Florida with its principal place of business in Clermont, Florida. It was first registered in Florida in 2009.

4. Multi-Choice Realty is a privately held company owned by my wife and me. I am also the manager of Multi-Choice Realty.

5. Multi-Choice Realty is licensed real estate brokerage firm that primarily serves Chinese-speaking clients in the United States, China, and Canada.

6. Multi-Choice Realty has approximately 14 employees, including real estate agents, on its payroll. I am very proud of being a small business owner in Florida and creating local jobs in my community.

7. Multi-Choice Realty is not owned or controlled by the Chinese government or the Chinese Communist Party.

8. I am neither a member of the Chinese government nor a member of the Chinese Communist Party.

9. In 2022, Multi-Choice Realty was involved in 74 real estate acquisitions. The majority of these acquisitions were for clients who were Chinese or Chinese American.

10. I am aware that Senate Bill 264 was recently passed in Florida and signed into law on May 8, 2023. SB 264 contains a new law, which is the subject of this lawsuit (hereinafter, "Florida's New Alien Land Law"). I learned about the new law from people I know, as well as from news and media reports. I have read the new law, read articles about it, and discussed it with others to try to understand what it means.

11. Based on my understanding, Florida's New Alien Land Law will directly impact Multi-Choice Realty's existing customers, as well as many of its potential clients. In particular, it will impact Multi-Choice Realty's Chinese customers who are neither citizens nor permanent residents of the United States.

12. As to those customers who already own real estate in Florida, the new law will require them to register their properties with the Florida Department of Economic Opportunity, and it will prohibit them from purchasing additional property. In addition, if any of those customers are interested in selling their properties, the new law will impose restrictions on who can and cannot buy that property in Florida. If any of those customers were to sell to someone in violation of the new law, they could be arrested and charged with a misdemeanor. If convicted, they could face up to one year in prison and a fine of $1,000, plus immigration consequences. Likewise, my company could be exposed to the same criminal culpability for facilitating, that is, "aiding and abetting" such a sale, which could implicate not only my wife and me as co-owners, but also the real estate agents on our payroll.

13. With respect to Multi-Choice Realty's potential Chinese customers who are neither citizens nor permanent residents of the United States, but who are interested in purchasing real estate in Florida, the new law will severely restrict them from making such a purchase after July 1, 2023. Even though the new law contains an exception allowing certain people to purchase one residential property

up to two acres in size and not within five miles of a military installation, that exception is very narrow. In addition, even for customers who may be eligible for the exception, the new law is unclear about the areas where they can legally purchase a home in Florida without risking criminal prosecution. It is extremely difficult to understand where Multi-Choice Realty's clients can safely purchase a property in the state because the definitions of "critical infrastructure" and "military installation" are ambiguous and very broad. I am very fearful that one of our clients could inadvertently purchase a home that violates the law and could be arrested and charged with a felony. If they were convicted, they could face up to five years in prison and a fine of $5,000, plus immigration consequences. On top of that, the property could be forfeited. In addition, my company could be exposed to the same criminal liability for "aiding and abetting" such a purchase, which could implicate not only my wife and me as co-owners, but the people on our payroll. With respect to the possible criminal sanctions for violating the law, even inadvertently, I am very worried about the potential impact on my business.

14. Ultimately, as a result of the new law, Multi-Choice Realty stands to lose an estimated 25 percent of its business. These losses will reflect the fact that Multi-Choice Realty will not be able to facilitate real estate transactions that would close after July 1, 2023, for some of its existing customers who are searching for properties to purchase, and will not be able to represent new customers in future transactions that are now barred under Florida's New Alien Land Law.

15. If the law goes into effect, I expect that Multi-Choice Realty will immediately lose prospective customers and income. In the time since the new law was signed by Governor DeSantis on May 8, 2023, the number of inquiries from prospective buyers have decreased substantially, as compared to this time last year.

I declare under penalty of perjury under the laws of the United States and the State of Florida that the foregoing is true and correct.

Executed this __5th__ day of June, 2023.

/s/ Jian Song

Jian Song

Exhibit I

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

YIFAN SHEN, *et al.*,

Plaintiffs,

v.

WILTON SIMPSON, *etc., et al.*,

Defendants.

Case No. 4:23-cv-208

DECLARATION OF KELIANG ZHU

I, Keliang Zhu, hereby declare as follows:

1. I am an attorney, duly licensed to practice law in the State of California and my motion for *pro hac vice* admission is pending before this Court. I am an attorney at DeHeng Law Offices PC, counsel of record for Plaintiffs in the above-captioned action. I make this declaration in support of Plaintiffs' Motion for Preliminary Injunction, filed concurrently herewith. I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I could and would competently testify thereto.

Statements to the Press & Via Social Media

2. The following materials relate to statements made on or about September 22, 2022:

a. **Exhibit 1**: A true and correct copy of a press release, dated

September 22, 2022, titled "Governor Ron DeSantis Counteracts Malign Influence by China and Other Hostile Nations in Florida through New Action," available at https://www.flgov.com/2022/09/22/governor-ron-desantis-counteracts-malign-influence-by-china-and-other-hostile-nations-in-florida-through-new-action/.

b. **Exhibit 2**: A true and correct copy of an announcement, released on September 22, 2022, titled "Stop CCP Influence," available at https://www.flgov.com/wp-content/uploads/2022/09/9.22-Stop-CCP-Influence.pdf.

c. **Exhibit 3**: A transcript of portions of a video recording of remarks made by Florida Governor Ron DeSantis at press conference on September 22, 2022, titled "Governor's Press Conference on Restrictions Against Foreign Countries." The complete video recording is available at https://thefloridachannel.org/videos/9-22-22-governors-press-conference-on-restrictions-against-foreign-countries/. The transcript is of the following portions of the video recording, which are identified herein by their timestamps: 06:29 to 06:58, 11:16 to 12:39, 12:48 to 13:11, and 13:27 to 14:01.

3. The following materials relate to statements made on or about December 9, 2022:

a. **Exhibit 4**: A true and correct copy of a press release, dated December 9, 2022, titled "Senator Jay Collins Teams Up With Agriculture Commissioner-Elect Wilton Simpson and Rep. David Borrero to Restrict Foreign Control of Florida Agriculture Land and Land Surrounding Military Bases," available at https://www.flsenate.gov/Media/PressRelease/Show/4378.

b. **Exhibit 5**: A true and correct copy of a news article published by Florida's Voice, dated December 9, 2022, titled "Agriculture Commissioner-Elect Wilton Simpson Announces Plan to Ban Foreign Control of Florida Land," available at https://flvoicenews.com/wilton-simpson-foreign/.

c. **Exhibit 6**: A true and correct copy of a news article, published by Fox 13 News, dated December 9, 2022, titled "Florida's new agricultural commissioner wants to ban foreign agricultural land sales," available at https://www.fox13news.com/news/floridas-new-agriculture-commissioner-wants-to-ban-foreign-ag-land-sales. The news article quotes statements made by Florida Commissioner Wilton Simpson which were also recorded on video; the video recording corresponding to the news article is available on the foregoing webpage.

d. **Exhibit 7**: A true and correct copy of a statement made by

Florida Senator Jay Collins via his verified Twitter account, @JayCollinsFL, on December 9, 2022 at 2:29 p.m., available at https://twitter.com/JayCollinsFL/status/1601313013772210178.

4. The following materials relate to statements on or about January 10, 2023:

a. **Exhibit 8**: A transcript of portions of a video recording of remarks by Florida Governor Ron DeSantis at a press conference on January 10, 2023, titled "Governor's Press Conference on Conservation." The complete video recording of the press conference is available at https://thefloridachannel.org/videos/1-10-23-governors-press-conference-on-conservation/. The transcript is of the following portions of the video recording, which are identified herein by their timestamps: 38:55 to 40:17.

5. The following materials relate to statements made on or about February 7, 2023:

a. **Exhibit 9**: A true and correct copy of a news article published by Florida's Voice, dated February 7, 2022, titled "Agriculture commissioner's agenda includes protecting farmland, defending Second Amendment," available at https://flvoicenews.com/agriculture-commissioner-agenda-includes-protecting-farmland-defending-second-

amendment/.

6. The following materials relate to statements on or about March 3, 2023:

a. **Exhibit 10**: A true and correct copy of a statement made by Florida Senator Jay Collins via his verified Twitter account, @JayCollinsFL, on March 3, 2023 at 1:53 p.m., available at https://twitter.com/JayCollinsFL/status/1631744564485652484.

b. **Exhibit 11**: A true and correct copy of a statement made by Florida Commissioner of Agriculture Wilton Simpson via his verified Twitter account, @WiltonSimpson, on March 3, 2023 at 3:55 p.m., available at https://twitter.com/WiltonSimpson/status/1631775058241699842.

7. The following materials relate to statements made on or about March 7, 2023:

a. A video recording of the joint legislative session of the Florida Senate and Florida House of Representatives for Florida Governor Ron DeSantis's "State of the State Address" is available at https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=8536.

b. **Exhibit 12**: A true and correct copy of a press release, dated March 7, 2023, titled "Governor Ron DeSantis Delivers State of the State Address," available at https://www.flgov.com/2023/03/07/governor-ron-

desantis-delivers-state-of-the-state-address/.

c. **Exhibit 13**: A true and correct copy of a statement made by Florida Senator Jay Collins via his verified Twitter account, @JayCollinsFL, on March 7, 2023 at 12:20 p.m., available at https://twitter.com/JayCollinsFL/status/1633170801607188487.

8. The following materials relate to statements made on or about March 7, 2023:

a. **Exhibit 14**: A true and correct copy of a statement made by Florida Commissioner of Agriculture Wilton Simpson via his verified Twitter account, @WiltonSimpson, on March 15, 2023 at 10:22 a.m., available at https://twitter.com/WiltonSimpson/status/1636025075622182912.

9. The following materials relate to statements on or about April 11, 2023:

a. **Exhibit 15**: A true and correct copy of a statement made by Florida Senator Jay Collins via his verified Twitter account, @JayCollinsFL, on April 11, 2023 at 4:41 p.m., available at https://twitter.com/JayCollinsFL/status/1645904817515290625.

b. **Exhibit 16**: A true and correct copy of a statement made by Florida Commissioner of Agriculture Wilton Simpson via his verified

Twitter account, @WiltonSimpson, on April 11, 2023 at 6:30 p.m., which is available at https://twitter.com/WiltonSimpson/status/1645932382577467392.

c. **Exhibit 17**: A transcript of portions of a video recording of an interview by Fox Business News on April 11, 2023 of Florida Senator Jay Collins by reporter Jackie DeAngelis, available at https://www.foxbusiness.com/video/6324622889112.

10. The following materials relate to statements on or about April 12, 2023:

a. **Exhibit 18**: A true and correct copy of a statement made by Florida Senator Jay Collins via his verified Twitter account, @JayCollinsFL, on April 12, 2023 at 8:19 a.m., available at https://twitter.com/JayCollinsFL/status/1646140972672090118.

11. The following materials relate to statements on or about May 5, 2023:

a. **Exhibit 19**: A true and correct copy of a press release dated May 5, 2023, titled "Governor Ron DeSantis Celebrates Historic Success During the 2023 Legislative Session," available on the Florida Governor's website at https://www.flgov.com/2023/05/05/governor-ron-desantis-celebrates-historic-success-during-the-2023-legislative-session/.

12. The following materials relate to statements on or about May 5, 2023:

a. **Exhibit 20**: A true and correct copy of a statement made by Florida Governor via his verified Twitter account, @GovRonDeSantis, on May 6, 2023 at 9:00 a.m., available at https://twitter.com/GovRonDeSantis/status/1654848502378422273?cxt=HHwWgoDT1b78mfctAAAA.

13. The following materials relate to statements on or about May 8, 2023:

a. **Exhibit 21**: A true and correct copy of a press release dated May 8, 2023, titled "Governor Ron DeSantis Cracks Down on Communist China," available on the Florida Governor's website at https://www.flgov.com/2023/05/08/governor-ron-desantis-cracks-down-on-communist-china/.

d. **Exhibit 22**: A true and correct copy of an announcement released on May 8, 2023, titled "Stop CCP Influence," which is available on the Florida Governor's website at https://www.flgov.com/wp-content/uploads/2023/05/Stop-CCP-Influence-2023.pdf.

e. **Exhibit 23**: A transcript of portions of a video recording of remarks by Florida Governor Ron DeSantis, Florida Commissioner of Agriculture Wilton Simpson, Florida Senator Jay Collins, Florida House Representative David Borrero, and others at a press conference on May 8, 2023, titled "Signing of Foreign Entities Legislation." The full video

recording of press conference is available on the website of the Florida government-access channel at https://thefloridachannel.org/videos/5-8-23-signing-of-foreign-entities-legislation/. The transcript is of the following portions of the video recording: 07:13 to 07:24, 09:02 to 09:53, 10:43 to 12:04, 15:27 to 15:39, 17:08 to 17:52, 24:04 to 25:31, 31:28 to 31:50, 32:09 to 34:01, and 37:58 to 39:09.

f. **Exhibit 24**: A true and correct copy of a statement made by Florida Governor via his verified Twitter account, @GovRonDeSantis, on May 8, 2023 at 10:18 a.m., available at https://twitter.com/GovRonDeSantis/status/1655593116806569984?cxt=HHwWgICzveDK7PktAAAA.

g. **Exhibit 25**: A true and correct copy of a statement made by Florida Governor via his verified Twitter account, @GovRonDeSantis, on May 8, 2023 at 11:00 a.m., available at https://twitter.com/GovRonDeSantis/status/1655603599102078976?cxt=HHwWgMCz1fOs8fktAAAA.

h. **Exhibit 26**: A true and correct copy of a statement made by Florida Commissioner of Agriculture Wilton Simpson via his verified Twitter account, @WiltonSimpson, on May 8, 2023 at 12:56 p.m., available at

https://twitter.com/WiltonSimpson/status/1655632709929033738?cxt=HHwWlICznbDL_vktAAAA.

i. **Exhibit 27**: A true and correct copy of a statement made by Florida Governor via his verified Twitter account, @GovRonDeSantis, on May 8, 2023 at 4:31 p.m., available at https://twitter.com/GovRonDeSantis/status/1655686919588659200?cxt=HHwWgIC-1eWel_otAAAA.

j. **Exhibit 28**: A true and correct copy of a statement by Florida House Representative David Borrero, made via his verified Twitter account, @DavidBorreroFL, on May 8, 2023 at 6:01 p.m., available at https://twitter.com/DavidBorreroFL/status/1655709438152417282?cxt=HHwWhICxhca9ofotAAAA.

14. The following materials relate to statements on or about May 9, 2023:

a. **Exhibit 29**: A true and correct copy of a statement by Florida Senator Jay Collins, made via his verified Twitter account, @JayCollinsFL, on May 9, 2023 at 4:23 p.m., available at https://twitter.com/JayCollinsFL/status/1656047213204652056?cxt=HHwWsIC2pdKKu_stAAAA.

Legislative Materials

15. **Exhibit 30** is a true and correct copy of a summary of the Bill History

of Senate Bill 264 ("SB 264"), available at https://www.flsenate.gov/Session/Bill/2023/264/ByCategory/?Tab=BillHistory.

16. The following materials relate to legislative activities on or about March 2, 2023:

a. **Exhibit 31** is a true and correct copy of the Original Filed version of SB 264, which was filed on or about March 2, 2023, available at https://flsenate.gov/Session/Bill/2023/264/BillText/Filed/PDF.

17. The following materials relate to legislative activities on or about March 13, 2023:

a. **Exhibit 32**: A true and correct copy of a pre-meeting document, dated March 13, 2023, prepared by the Judiciary Committee of the Florida Senate, titled "Bill Analysis and Fiscal Impact Statement," available at https://www.flsenate.gov/Session/Bill/2023/264/Analyses/2023s00264.pre.ju.PDF.

b. **Exhibit 33**: A true and correct copy of proposed amendments to SB 264, number 606852, filed on March 13, 2023, available at https://www.flsenate.gov/Session/Bill/2023/264/Amendment/606852/PDF.

c. **Exhibit 34**: A true and correct copy of proposed amendments to SB 264, number 647298, filed on March 13, 2023, available at https://www.flsenate.gov/Session/Bill/2023/264/Amendment/647298/PDF.

18. The following materials relate to legislative activities on or about March 14, 2023:

a. A video recording of the meeting of the Judiciary Committee of the Florida Senate that took place on March 14, 2023 is available at https://www.flsenate.gov/media/videoplayer?EventID=1_zc8d1g0v-202303141600&Redirect=true.

b. **Exhibit 35**: A true and correct copy of meeting document, dated March 14, 2023, titled "Committee Vote Record," available at https://www.flsenate.gov/Session/Bill/2023/264/Vote/2023-03-14%200400PM~S00264%20Vote%20Record.PDF.

c. **Exhibit 36**: A true and correct copy of a post-meeting document, dated March 14, 2023, prepared by the Judiciary Committee of the Florida, Senate, titled "Bill Analysis and Fiscal Impact Statement," available at https://www.flsenate.gov/Session/Bill/2023/264/Analyses/2023s00264.ju.PDF.

19. The following materials relate to legislative activities on or about March 15, 2023:

a. **Exhibit 37**: A true and correct copy of the First Committee Substitute of Senate Bill 264 ("CS/SB 264"), which replaced the prior

version of SB 264 on or about March 15, 2023, available at https://flsenate.gov/Session/Bill/2023/264/BillText/c1/PDF.

20. The following materials relate to legislative activities on or about March 21, 2023:

a. **Exhibit 38**: A true and correct copy of a pre-meeting document prepared by the Rules Committee of the Florida Senate, titled "Bill Analysis and Fiscal Impact Statement," dated March, 21, 2023, available on Florida Senate website at https://www.flsenate.gov/Session/Bill/2023/264/Analyses/2023s00264.pre.rc.PDF.

b. **Exhibit 39**: A true and correct copy of proposed amendments to CS/SB 264, number 833514, filed on March 21, 2023, available at https://www.flsenate.gov/Session/Bill/2023/264/Amendment/833514/PDF.

21. The following materials relate to legislative activities on or about March 22, 2023:

a. A video recording of the meeting of the Rules Committee of the Florida Senate that took place on March 22, 2023 is available at https://www.flsenate.gov/media/videoplayer?EventID=1_nty0d3lq-202303220830&Redirect=true.

b. **Exhibit 40**: A true and correct copy of meeting document, dated

March 22, 2023, titled "Committee Vote Record," available at https://www.flsenate.gov/Session/Bill/2023/264/Vote/2023-03-22%200830AM~S00264%20Vote%20Record.PDF.

c. **Exhibit 41**: A true and correct copy of a post-meeting document, dated March 22, 2023, prepared by the Rules Committee of the Florida Senate, titled "Bill Analysis and Fiscal Impact Statement," available at https://www.flsenate.gov/Session/Bill/2023/264/Analyses/2023s00264.rc.PDF.

22. The following materials relate to legislative activities on or about March 23, 2023:

a. **Exhibit 42**: A true and correct copy of the Second Committee Substitute of Senate Bill 264 ("CS/CS/SB 264"), which replaced the prior version of CS/SB 264 on or about March 23, 2023, available at https://flsenate.gov/Session/Bill/2023/264/BillText/c2/PDF.

23. The following materials relate to legislative activities on or about April 10, 2023:

a. **Exhibit 43**: A true and correct copy of proposed amendments to CS/CS/SB 264, number 708856, filed on April 10, 2023, available at https://www.flsenate.gov/Session/Bill/2023/264/Amendment/708856/PDF.

b. **Exhibit 44**: A true and correct copy of proposed amendments to CS/CS/SB 264, number 415792, filed on April 10, 2023, available at https://www.flsenate.gov/Session/Bill/2023/264/Amendment/415792/PDF.

24. The following materials relate to legislative activities on or about April 11, 2023:

a. A video recording of the Florida Senate legislative session that took place on April 11, 2023 is available at https://thefloridachannel.org/videos/4-11-23-senate-session/.

b. **Exhibit 45**: A true and correct copy of a document from the Florida Senate's legislative session on April 11, 2023, titled "CS/CS/SB 264 Third Reading," available at https://www.flsenate.gov/Session/Bill/2023/264/Vote/SenateVote_s00264c2010.PDF.

c. **Exhibit 46**: A true and correct copy of the First Engrossed version of Senate Bill 264 ("CS/CS/SB 264 1st Eng."), which replaced the prior version CS/CS/SB 264 on April 11, 2023 and is available at https://flsenate.gov/Session/Bill/2023/264/BillText/e1/PDF.

25. The following materials relate to legislative activities on or about April 27, 2023:

a. **Exhibit 47**: A true and correct copy of proposed amendments

to CS/CS/SB 264 1st Eng., number 510709, filed on or about April 27, 2023, available at https://www.flsenate.gov/Session/Bill/2023/264/Amendment/510709/PDF.

26. The following materials relate to legislative activities on or about April 30, 2023:

a. **Exhibit 48**: A true and correct copy of proposed amendments to amendment number 510709 to CS/CS/SB 264 1st Eng., number 353175, filed on or about April 30, 2023, available at https://www.flsenate.gov/Session/Bill/2023/264/Amendment/353175/PDF.

27. The following materials relate to legislative activities on or about May 1, 2023:

a. A video recording of the Florida House of Representatives legislative session that took place on May 1, 2023 is available at https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=8946.

b. **Exhibit 49**: A true and correct copy of proposed amendments to CS/CS/SB 264 1st Eng., number 639273, filed on or about May 1, 2023, available at https://www.flsenate.gov/Session/Bill/2023/264/Amendment/639273/PDF.

28. The following materials relate to legislative activities on or about May 2, 2023:

a. A video recording of the Florida House of Representatives legislative session that took place on May 2, 2023 is available at https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=8951.

b. **Exhibit 50**: A true and correct copy of proposed amendments to CS/CS/SB 264 1st Eng., number 048607, filed on or about May 2, 2023, available at https://www.flsenate.gov/Session/Bill/2023/264/Amendment/048607/PDF.

c. **Exhibit 51**: A true and correct copy of a message from the Florida Senate to the Florida House of Representatives, dated May 2, 2023, available at https://www.flsenate.gov/Session/Bill/2023/264/Analyses/2023s00264.hms.ju.PDF.

29. The following materials relate to legislative activities on or about May 3, 2023:

a. A video recording of the Florida House of Representatives legislative session that took place on May 3, 2023 is available at https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=8955.

b. **Exhibit 52**: A true and correct copy of a document from the Florida House of Representatives' legislative session on May 3, 2023, titled "CS/CS/SB 264 1st Eng. Passage Third Reading," available at

https://www.flsenate.gov/Session/Bill/2023/264/Vote/HouseVote_s00264e1440.PDF.

30. The following materials relate to legislative activities on or about May 4, 2023:

a. A video recording of the Florida Senate legislative session that took place on May 4, 2023 is available at https://www.flsenate.gov/media/VideoPlayer?EventID=1_nty0d3lq-202305041000&Redirect=true.

b. A video recording of the Florida House of Representative session that took place on May 4, 2023 is available at https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=8960.

c. **Exhibit 53**: A true and correct copy of proposed amendments to amendment number 048607 to CS/CS/SB 264 1st Eng., number 790990, filed on or about May 4, 2023, available at https://www.flsenate.gov/Session/Bill/2023/264/Amendment/790990/PDF.

d. **Exhibit 54**: A true and correct copy of a document from the Florida Senate's legislative session on May 4, 2023, titled "CS/CS/SB 264 Returning Messages," available at https://www.flsenate.gov/Session/Bill/2023/264/Vote/SenateVote_s00264e1056.PDF.

e. **Exhibit 55**: A true and correct copy of a document from the Florida House of Representatives' legislative session on May 4, 2023, titled "CS/CS/SB 264 1st Eng. Passage," available at https://www.flsenate.gov/Session/Bill/2023/264/Vote/HouseVote_s00264e1498.PDF.

f. **Exhibit 56**: A true and correct copy the Second Engrossed version of CS/CS/SB 264 1st Eng. ("CS/CS/SB 264 2nd Eng"), which replaced the prior version CS/CS/SB 264 1st Eng. on May 4, 2023 and is available at https://www.flsenate.gov/Session/Bill/2023/264/BillText/e2/PDF.

g. **Exhibit 57**: A true and correct copy of the Enrolled version of CS/CS/SB 264 2nd Eng. ("CS/CS/SB 264 Enrolled"), which replaced the prior version CS/CS/SB 264 2nd Eng. on May 4, 2023 and is available at https://www.flsenate.gov/Session/Bill/2023/264/BillText/er/PDF.

I declare under penalty of perjury under the laws of the United States and the State of Florida that the foregoing is true and correct.

Executed this 6th day of June, 2023.

/s/ *Keliang Zhu*
Keliang Zhu

EXHIBIT 3

TRANSCRIPT

Press Conference on September 22, 2022, titled "Governor's Press Conference on Restrictions Against Foreign Countries"

https://thefloridachannel.org/videos/9-22-22-governors-press-conference-on-restrictions-against-foreign-countries/

Remarks by Florida Governor Ron DeSantis

06:29 to 06:58

I'm also excited about today's announcement because if you remember in the most recent legislature with Speaker Sprowls and Simpson, we were able to do in 2021, a package of bills to recognize that we do not want to see malign foreign influence in the state of Florida. And the number one source of that influence—not just in the United States but really around the world—is the Chinese Communist Party.

11:16 to 12:39

You also see around the country things like the CCP, or a front group, company, or something, they'll buy like all this land, farmland and all this other stuff. And you're thinking, how is that in our national interest to be selling all this land? And you know, they pay a lot more than it's worth, and that's why people are doing it, but from a national security perspective, is that something that we want to see? And a lot of times, they'll be companies that will put themselves out as private, but if you peel back the onion a little bit, they're basically controlled by the Chinese government. So we think that's something that the US as a whole needs to take much more seriously, and what we're going to be doing in Florida is doing that.

You also have the CCP buying land near our military installations. Why are they doing that? Well, of course, they want to get intelligence, they want to know what's going on here in the United States. And we have 21 different military branches [ ] form every branch of the Armed Forces, here in the State of Florida, and we view that as something that's significant. So we have to be on the lookout for what they're doing. So today, we're going to propose legislation to pass a bill to prohibit the purchase of these lands, including lands near military bases, by China and other countries of concern.

12:48 to 13:11

And yes, there's the danger of having this land misused for intelligence or military purposes, but put that aside, we saw what happened with covid, when almost all this stuff was made in China. Why would you want them to be involved in our own food supply and our chain, supply chain, here in the United States? They've got enough power over this throughout the globe.

13:27 to 14:01

So I think this is something that you'll see other states will do, and if you look around the country, just with farmland, as of 2019, foreign persons and entities overall held 2.7% of privately owned agricultural land in this country. In Florida, it was about 5.8%. Now, that is not all countries of concern. I mean, the United Kingdom, for example, has some companies that are involved, but clearly, when you're talking about the CCP and you're talking about countries like that, we need to have some distance there, and we need to have a layer of protection for the people of Florida.

EXHIBIT 8

TRANSCRIPT

Press Conference on anuar 0, 202 , titled at "Governor's Press Conference on Conservation"

https://thefloridachannel.org/videos/1-10-23-governors-press-conference-on-conservation/

Remarks by Florida Governor Ron DeSantis

38:55 to 40:17

So my view on the, our economy is, in Florida, is, we don't want to have holdings by hostile nations. And so, if you look at the Chinese Communist Party, they've been very active in throughout the Western Hemisphere in gobbling up land and investing in different things. And, you know, when they have interests that are opposed to ours, and you see how they've wielded their authority, and especially with President Xi, who's taken a much more Marxist/Leninist turn since he's been ruling China. That is not in the best interest of Florida to have the Chinese Communist Party owning farmland, owning land close to military bases. But you know, my view is, I think there's a broad agreement in those two, but my view is, okay, yeah, no farmland, but why would you want them buying residential developments or things like that? I don't want them owning subdivisions and things like that. I think that the issue's just going to be, I think people agree with that, the issue's going to be, yeah, obviously, if someone comes in and buys, it's not the CCP that's signing that, these are holding companies and all that. So you've got to structure in a way that will effectively police it, but yes, we do not need to have CCP influence in Florida's economy.

EXHIBIT 18


Tweet
Jay Collins
@JayCollinsFL
We are protecting our families, businesses, and land from bad actors like China who are actively working against our national security.
Thank you @JackieDeAngelis for having me on @EveningEdit @FoxBusiness to talk about my groundbreaking legislation that just passed unanimously.
DAVENPORT
FOX BUSINESS
JAY COLLINS (R) | FLORIDA STATE SENATOR
FLORIDA PASSES LEGISLATION TO PROHIBIT CHINESE-GOVT LAND PURCHASES
DOW 33,684.79 98.27 S&P 500 4,108.94
INDEX RECAP 16.62 0.80 NASDAQ 100 VIX (VXN) 24.71
0:30 / 2:09
8:19 AM · Apr 12, 2023 · 2,928 Views

EXHIBIT 21

Governor Ron DeSantis Cracks Down on Communist China

On May 8, 2023, in News Releases, by Staff

BROOKSVILLE, Fla. — Today, Governor DeSantis signed three bills to counteract the malign influence of the Chinese Communist Party in the state of Florida. Last year, Governor DeSantis called on the Legislature to build upon the efforts he led two years ago to combat corporate espionage and higher education subterfuge carried out by the CCP and its agents. With the legislation signed today to limit Chinese purchases of agriculture land and land near military bases and critical infrastructure, to protect digital data from Chinese spies, and to root out Chinese influence in Florida's education system, Florida has once again taken the lead in protecting American interests from foreign threats and has provided a blueprint for other states to do the same. More information on today's announcement is available here.

"Florida is taking action to stand against the United States' greatest geopolitical threat — the Chinese Communist Party," **said Governor Ron DeSantis**. "I'm proud to sign this legislation to stop the purchase of our farmland and land near our military bases and critical infrastructure by Chinese agents, to stop sensitive digital data from being stored in China, and to stop CCP influence in our education system from grade school to grad school. We are following through on our commitment to crack down on Communist China."

"Food security is national security, and we have a responsibility to ensure Floridians have access to a safe, affordable, and abundant food supply," **said Commissioner Wilton Simpson.** "China and other hostile foreign nations control hundreds of thousands of acres of critical agricultural lands in the U.S., leaving our food supply and our national security interests at risk. Restricting China and other hostile foreign nations from controlling Florida's agricultural land and lands near critical infrastructure facilities protects our state, provides long-term stability, and preserves our economic freedom. This bill is long overdue, and I thank Governor Ron DeSantis, Senate President Kathleen Passidomo, House Speaker Paul Renner, Senator Jay Collins, and Representative David Borrero for their leadership on this issue and their commitment to protecting Florida and our security interests."

SB 264, Interests of Foreign Countries, restricts governmental entities from contracting with foreign countries and entities of concern and restricts conveyances of agricultural lands and other interests in real property to foreign principals, the People's Republic of China, and other entities and persons that are affiliated with them. It also amends certain electronic health record statutes to ensure that health records are physically stored in the continental U.S., U.S. territories, or Canada.

SB 846, Agreements of Educational Entities with Foreign Entities, prohibits state colleges and universities and their employees and representatives from soliciting or accepting any gift in their official capacities from a college or university based in a foreign country of concern. It also prohibits state colleges and universities from accepting any grant from or participating in any agreement or partnership with any college or university based in a foreign country of concern. A state college or university may only participate in a partnership or agreement with a college or university based in a foreign country of concern if authorized by the Board of Governors or the State Board of Education. The bill also prohibits the ownership or operation of any private school participating in the state's school choice scholarship program by a person or entity domiciled in, owned by, or in any way controlled by a foreign country of concern.

SB 258 requires the Department of Management Services to create a list of prohibited applications owned by a foreign principal or foreign countries of concern, including China, which present a cybersecurity and data privacy risk. The bill requires government and educational institution to block access to prohibited applications on all government servers and devices in Florida and requires public employers to retain the ability to remotely wipe and uninstall these dangerous applications from government issued devices.

For more information about Governor DeSantis' executive action taken against the Chinese Communist Party, click here. For more information about Governor DeSantis' previous legislative accomplishments targeting the Chinese Communist Party, click here.

###

Comments are closed.

Contact Governor DeSantis

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Email Governor DeSantis

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Email Lt. Governor Nuñez

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EXHIBIT 32

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 264
INTRODUCER:	Senator Collins
SUBJECT:	Interests of Foreign Countries
DATE:	March 13, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	**Pre-meeting**
2.			RC	

I. Summary:

SB 264 generally restricts both governmental entity contracting with certain foreign countries and entities of concern, as well as conveyances of agricultural lands and other interests in real property to foreign principals, the People's Republic of China, and other entities and persons that are affiliated with them. It also amends certain electronic health record statutes to ensure that such records are physically stored in the continental U.S., not overseas.

Specifically, with respect to governmental entity contracting, the bill creates statutes that prohibit governmental entities from:

- Contracting with entities of foreign countries of concern.
- Entering into contracts for an economic incentive with a foreign entity.

And with respect to conveyances of agricultural lands, the bill creates statutes that:

- Prohibit a foreign principal from owning or acquiring agricultural land in the state.
- Prohibit a foreign principal from owning or acquiring any interest in real property within 20 miles of any military installation or critical infrastructure in the state.
- Prohibit China, Chinese Communist Party or other Chinese political party officials or members, Chinese business organizations, and persons domiciled in China, but who are not U.S. citizens, from purchasing or acquiring any interest in real property in the state.

The bill also amends:

- The Florida Electronic Health Records Act, to require that the offsite storage of certain personal medical information be physically maintained in the continental U.S.
- The Health Care Licensing Procedures Act, to require licensees to sign affidavits attesting that all patient information stored by them is being physically maintained in the continental U.S.

- The statute criminalizing threats and extortion, to provide that a person who commits a violation of the statute, and at the time is acting as a foreign agent with the intent of benefitting a foreign country of concern, commits a first degree felony.

The bill takes effect July 1, 2023.

II. Present Situation:

Foreign Ownership of U.S. Agricultural Land

Foreign ownership and investment in U.S. agricultural land has generated significant interest in recent years.[1] Several high-profile incidents have prompted lawmakers to focus their attention on evaluating and responding to the potential impacts of foreign ownership and investment on national security, trade, and food security.[2]

A significant example occurred last year. Fufeng Group Limited, a Chinese food manufacturer, acquired 300 acres of land near the Grand Forks Air Force Base in North Dakota in order to build a wet corn milling and biofermentation plant.[3] The Air Force base, which is only about 12 miles away from the site, is believed to be the home of some of the country's most sophisticated, "top secret" military drone technology.[4] The location of the land close to the base made it particularly convenient for monitoring air traffic flows in and out of the base, among other security-related concerns.[5]

In January, Andrew P. Hunter, Assistant Secretary of the Air Force for Acquisition, Technology and Logistics,[6] sent U.S. Senator John Hoeven a letter providing the Air Force's official position on the project. It confirmed that "Grand Forks Air Force Base is the center of military activities related to both air and space operations" and that the department's position is "unambiguous: the proposed project presents a significant threat to national security with both near- and long-term

[1] Aleks Phillips, *What the U.S. Is Doing to Curtail Chinese Land Ownership*, NEWSWEEK, Feb. 13, 2023, https://www.newsweek.com/chinese-land-ownership-investment-us-military-bases-1780886.
[2] *See* Letter from Congressmen Glenn "GT" Thompson & James Comer to Gene L. Dodaro, Comptroller General of the U.S. Government Accountability Office (Oct. 1, 2022), *available at* https://oversight.house.gov/wp-content/uploads/2022/10/20221001_GAO_foreignlandownership.pdf (requesting that the office conduct a review of foreign investment in U.S. farmland and its impact on national security, trade, and food security).
[3] Congressional Research Service (CRS), *Foreign Ownership and Holdings of U.S. Agricultural Land* (version 4, updated Jan. 24, 2023), *available at* https://crsreports.congress.gov/product/pdf/IF/IF11977.
[4] Ariel Zilber, *Chinese firm bought North Dakota farm near U.S. Air Force drone base: report*, NEW YORK POST, Jul. 1, 2022, https://nypost.com/2022/07/01/chinese-firm-bought-farm-near-us-air-force-drone-base-report/; *see also* Letter from Thompson & Comer, *supra* note 2 (describing the technology as "top secret"); *see also* Lauren Greenwood, U.S.-China Economic and Security Review Commission, *China's Interests in U.S. Agriculture: Augmenting Food Security through Investment Abroad* (May 26, 2022), 11, *available at* https://www.uscc.gov/sites/default/files/2022-05/Chinas_Interests_in_U.S._Agriculture.pdf (noting that the Grand Forks Air Force Base "houses some of the United States' top intelligence, surveillance, and reconnaissance capabilities").
[5] Greenwood, *supra* note 4.
[6] U.S. Air Force, *Andrew P. Hunter* (Sept. 2022), https://www.af.mil/About-Us/Biographies/Display/Article/3154079/andrew-p-hunter/.

risks of significant impacts to our operations in the area."[7] About a week after the department issued its letter, the Grand Forks City Council abandoned the project.[8]

In addition to national security concerns, federal officials are also concerned about potential food security impacts. A recent letter from 130 lawmakers to the U.S. Government Accountability Office expressed concern that "foreign investment in U.S. farmland could result in foreign control of available U.S. farmland, especially prime agricultural lands, and possibly lead to foreign control over food production and food prices."[9] In a separate interview, one of the lawmakers noted that "food security is national security," explaining that Russia was able to exercise undue influence over Europe because it supplied Europe with a significant amount of natural gas, and that China might similarly try to control food supplies in South America, Southeast Asia, and even North America, in order to exert greater coercive power around the globe.[10]

Other recent incidents, while not involving the acquisition of U.S. farmland, suggest that China is working aggressively to undermine U.S. interests in other ways, both at home and abroad:

- Confucius Institutes, which offer Chinese language and cultural programs, first began appearing on U.S. university campuses in 2005. Some Members of Congress and others have alleged that they may play a role in China's efforts to influence public opinion abroad, recruit "influence agents" on U.S. campuses, and engage in cyber espionage and intellectual property theft.[11]
- In November of last year, FBI Director Christopher Wray testified at a U.S. Senate Homeland Security and Governmental Affairs Committee hearing about the existence of certain unauthorized 'police stations' established by China in major U.S. cities, noting that the U.S. has made a number of indictments involving the Chinese government harassing, stalking, surveilling, and blackmailing people in the U.S. who disagreed with Chinese leader Xi Jinping.[12]
- Last month, the U.S. shot down a Chinese spy balloon after it had traversed over a large swath of North America. The Biden Administration alleged it was part of a larger Chinese surveillance-balloon program that had violated the sovereignty of nations all over the word.[13]

[7] Letter from Andrew P. Hunter, Office of the Assistant Secretary, to U.S. Senator John Hoeven (Jan. 27, 2023), *available at* https://www.hoeven.senate.gov/imo/media/doc/USAIRFORCE-FUFENG-LETTER-HOEVEN.pdf.
[8] Meghan Arbegast, *Year-long Fufeng debate comes to an end after Grand Forks council members vote to stop project*, GRAND FORKS HERALD, Feb. 6, 2023, https://www.grandforksherald.com/news/local/year-long-fufeng-debate-comes-to-an-end-after-grand-forks-council-members-vote-to-stop-project.
[9] Letter from Thompson & Comer, *supra* note 2.
[10] NPR, *China is buying up more U.S. farmland. Some lawmakers consider that a security threat* (Mar. 1, 2023), https://www.npr.org/2023/03/01/1160297853/china-farmland-purchases-house-hearing-competition.
[11] CRS, *Confucius Institutes in the United States: Selected Issues* (version 12, updated May 20, 2022), https://crsreports.congress.gov/product/pdf/IF/IF11180.
[12] Michael Martina & Ted Hesson, *FBI director 'very concerned' by Chinese 'police stations' in U.S.,* REUTERS, Nov. 17, 2022, https://www.reuters.com/world/us/fbi-director-very-concerned-by-chinese-police-stations-us-2022-11-17/.
[13] Isaac Chotiner, *What's Behind the Chinese Spy Balloon,* THE NEW YORKER, Feb. 18, 2023, https://www.newyorker.com/news/q-and-a/whats-behind-the-chinese-spy-balloon.

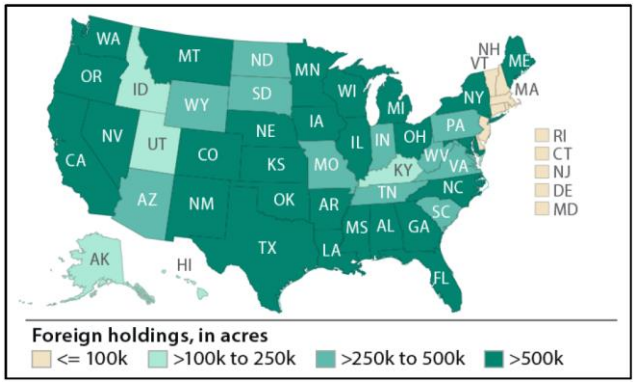
- This month, the U.S. (and Canada) issued orders banning the use of TikTok, a Chinese-owned video sharing app, on government-issued mobile devices amid growing privacy and cybersecurity concerns.[14]
- Also this month, U.S. defense and national security officials have raised the possibility that certain Chinese-made giant cargo cranes are being used for espionage.[15]

Ownership Statistics

Foreign persons and entities held an interest in 40.8 million acres of U.S. agricultural land in 2021, accounting for 3.1% of total privately owned land.[16] These data cover agricultural land and nonagricultural land (e.g. associated homesteads, roads, etc.). In 2021, forestland accounted for 47% of all foreign-owned land, cropland accounted for 29%, and pasture and other agricultural land for 22%. Nonagricultural land (such as homesteads and roads) accounted for 2%. Foreign land holdings have increased by an average of 2.2 million acres per year since 2015.[17]

With respect to China specifically, not including the Fufeng Group Limited's purchase in 2022, the U.S. Department of Agriculture reports that China accounted for 383,935 acres, or 0.9% of total foreign-owned U.S. agricultural land as of year-end 2021.[18] The department also reports that 85 Chinese investors own 275 parcels of agricultural land totaling 194,772 acres worth $1,868,577.[19]

Country	Total	Foreign Entities	U.S. Entities w/ Foreign Shares	% of U.S. Private Land
		(million acres)		(percent)
Canada	12.8	9.7	3.2	1.0%
Netherlands	4.9	4.4	0.5	0.4%
Italy	2.7	2.6	0.1	0.2%
United Kingdom	2.5	1.5	1.0	0.2%
Germany	2.3	1.4	0.9	0.2%
Subtotal	**25.2**	**19.6**	**5.7**	**2.0%**
Other Countries	12.4	7.1	5.3	1.0%
Not Listed	3.2	2.4	0.8	0.3%
Total	**40.8**	**29.1**	**11.7**	**3.1%**



Foreign Holdings of Agricultural Land, 2021[20]

As of year-end 2021, the states with the most foreign-owned agricultural acreage were Texas (5.3 million acres), Maine (3.6 million acres), Colorado (1.9 million acres), Alabama (1.8 million

[14] CBS News, *TikTok banned on U.S. government devices, and the U.S. is not alone. Here's where the app is restricted* (Mar. 1, 2023), https://www.cbsnews.com/news/tiktok-banned-us-government-where-else-around-the-world/.
[15] Kent Masing, *U.S. Concerned China-Made Cranes In American Ports Used To Spy On Military: Report*, INTERNATIONAL BUSINESS TIMES, Mar. 6, 2023, https://www.ibtimes.com/us-concerned-china-made-cranes-american-ports-used-spy-military-report-3673964.
[16] CRS, *supra* note 3, at 2.
[17] *Id.*
[18] *Id.;* Farm Service Agency, U.S. Department of Agriculture, *Foreign Holdings of U.S. Agricultural Land* (through Dec. 31, 2021), 4, *available at* https://www.fsa.usda.gov/programs-and-services/economic-and-policy-analysis/afida/annual-reports/index.
[19] Farm Service Agency, *supra* note 18, at 229.
[20] *Id.* at Table 1 and Figure 2 (internal citations omitted).

acres), and Oklahoma (1.7 million acres). Other states with more than 1 million foreign-owned acres were Arkansas, California, Florida, Georgia, Kansas, Louisiana, Michigan, New Mexico, Oregon, and Washington.[21]

According to the U.S. Department of Agriculture, of the 21,849,568 acres of privately held agricultural land in Florida, 1,382,284 acres (6.3%) are held by foreigners, which is among the highest proportions in the U.S.[22] It is unclear how much of that land is owned by China, although the department does report that it owns 96,975 acres in the "South Region," which includes Florida.[23]

Existing Federal and State Laws

Federal law currently imposes no restrictions on the amount of private U.S. agricultural land that can be foreign-owned.[24] However, the Agricultural Foreign Investment Disclosure Act of 1978 established a nationwide system for collecting information pertaining to the foreign ownership of U.S. agricultural land,[25] including land used for agricultural, forestry, or timber production purposes.[26] For purposes of the act, foreign persons include any individual, corporation, company, association, partnership, society, joint stock company, trust, estate, or any other legal entity (including any foreign government) under the laws of a foreign government or having a principal place of business outside of the U.S.[27]

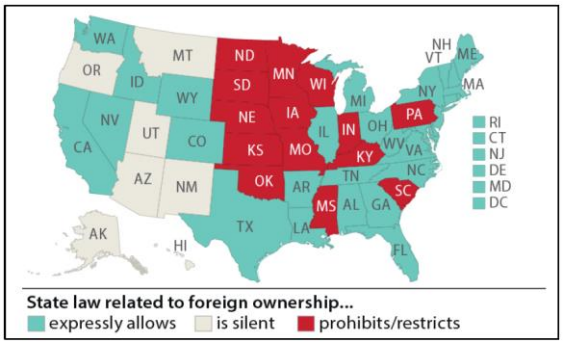
The act's regulations require foreign persons who buy, sell, or gain interest in U.S. agricultural land to disclose their holdings and transactions to the U.S. Department of Agriculture directly or to the Farm Service Agency county office where the land is located.[28] Failure to disclose this information may result in penalties and fines.[29] After the original disclosure, each subsequent change of ownership or use must be reported.[30] It should be noted that some have expressed concern that U.S. Department of Agriculture figures developed under the act may actually underestimate foreign ownership due to unreliable data collection and the definitions used by the department.[31]

The Committee on Foreign Investment in the U.S. is an interagency committee authorized to review certain transactions involving foreign investment in the U.S. and real estate transactions by foreign persons, in order to determine the effect of such transactions on national security.[32] Notwithstanding recent expansions to the committee's jurisdictional authority and review

[21] *Id.*
[22] *See* Farm Service Agency, *supra* note 18, at 4, 17.
[23] *Id.* at 238.
[24] CRS, *supra* note 3, at 1.
[25] Pub. L. No. 95-460, 92 Stat. 1263 (1978); 7 U.S.C. ss. 3501-3508.
[26] 7 U.S.C. s. 3508(1); 7 C.F.R. s. 781.2(b).
[27] 7 U.S.C. s. 3508(3); 7 C.F.R. s. 781.2(g).
[28] 7 U.S.C. s. 3501(a); 7 C.F.R. s. 781.3(a).
[29] 7 U.S.C. s. 3502; 7 C.F.R. ss. 781.4., 781.5.
[30] 7 U.S.C. s. 3501(a); 7 C.F.R. s. 781.3(b).
[31] Texas Farm Bureau, *Lawmakers ask for review of foreign ownership of U.S. farmland*, https://texasfarmbureau.org/lawmakers-ask-for-review-of-foreign-ownership-of-u-s-farmland/ (last visited Mar. 7, 2023).
[32] U.S. Department of the Treasury, *The Committee on Foreign Investment in the United States*, https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius (last visited Mar. 6, 2023).

considerations,[33] there appear to be significant gaps. For example, the committee recently determined that Fufeng Group Limited's purchase near Grand Forks Air Force Base was outside of its jurisdiction and that it would therefore take no further action.[34]

Some U.S. states and localities have instituted restrictions on the foreign ownership of farmland.[35] Although no state has instituted an absolute prohibition on all foreign ownership, some states have limited or proposed to prohibit certain foreign persons and entities from acquiring or owning an interest in agricultural land within their states, and several states have separate disclosure requirements within their states.[36]



Overview of Selected State Laws Related to Foreign Ownership of U.S. Agricultural Land[37]

There is no single uniform approach under state laws to addressing foreign ownership.[38] Some general categories include:

- Restrictions on the amount of land that can be owned or the duration of ownership.
- Distinctions involving private versus public land or how agricultural land is defined.
- Distinctions involving resident and nonresident aliens.
- Inheritance considerations involving land ownership.
- Restrictions on ownership by foreign corporations (e.g. corporate farming laws or requirements corporations are subject to in order to obtain license or register).
- Differences related to enforcement and penalties.[39]

Currently, in Florida, foreign persons and entities have the same rights in real property as do citizens of the U.S. Foreign corporations, upon qualifying to do business in the state, have the same rights in real property as do domestic corporations. Foreign ownership of a domestic corporation has no effect on that corporation's rights in real property. No disclosure is required by any person or corporation when acquiring, holding or transferring rights in real property.[40]

[33] *See id.* (discussing Executive Order 14083, the Foreign Investment Risk Review Modernization Act of 2018, and associated regulations).
[34] T.J. Nelson, KVVR Local News, *Fufeng USA Looking to Move Ahead with Grand Forks Project After Federal Agency Review Suddenly Ends* (Dec. 13, 2022), https://www.kvrr.com/2022/12/13/fufeng-usa-looking-to-move-ahead-with-grand-forks-project-after-federal-agency-review-suddenly-ends/.
[35] CRS *supra* note 3, at 1.
[36] *Id.*
[37] *Id.* at Figure 1 (internal citation omitted).
[38] *Id.* at 1.
[39] *Id.*
[40] *See* 2 INTERNATIONAL BUSINESS TRANSACTIONS s. 29:26 (3d ed., updated Nov. 2022).

Florida Electronic Health Records Act

The Florida Electronic Health Records Act[41] authorizes health care providers to release or access an identifiable health record of a patient without the patient's consent for use in the treatment of that patient for an emergency medical condition, when consent cannot be obtained from the patient or the patient representative due to the patient's condition or the nature of the situation requiring immediate medical attention.[42] It provides immunity from civil liability whenever a health care provider accesses or releases the identifiable health record in good faith under the statute. It also directs the Agency for Health Care Administration to develop a form to document patient authorization for the use or release of an identifiable health record.[43] The act includes definitions for the following terms: "electronic health record," "qualified electronic health record," "certified electronic health record technology," "health record," "identifiable health record," "patient," and "patient representative."[44]

Health Care Licensing Procedures Act

The Health Care Licensing Procedures Act[45] provides a streamlined and consistent set of basic licensing requirements for health care providers.[46] The act is intended to minimize confusion, standardize terminology, and include issues that are not otherwise addressed in state law pertaining to specific providers.[47] Among other things, it provides certain minimum licensure requirements, with which applicants and licensees must comply in order to obtain and maintain a license.[48]

Statute Criminalizing Threats and Extortion

State law criminalizes threats and extortion. One commits the crime if he or she, either verbally or by a written or printed communication:

> maliciously threatens to accuse another of any crime or offense, or by such communication maliciously threatens an injury to the person, property or reputation of another, or maliciously threatens to expose another to disgrace, or to expose any secret affecting another, or to impute any deformity or lack of chastity to another, with intent thereby to extort money or any pecuniary advantage whatsoever, or with intent to compel the person so threatened, or any other person, to do any act or refrain from doing any act against his or her will[.][49]

[41] Section 408.051, F.S.
[42] Section 408.051(3), F.S.
[43] Section 408.051(4), F.S.
[44] Section 408.051(2), F.S.
[45] Chapter 408, Part II, F.S.; *see also* s. 408.801(1), F.S. (providing a short title).
[46] Section 408.801(2), F.S.
[47] *Id.*
[48] *See generally* s. 408.810, F.S.
[49] Section 836.05, F.S.

The crime is a second degree felony, punishable by a term of imprisonment not exceeding 15 years[50] and a $10,000 fine,[51] or possibly more under the habitual offender statute.[52]

III. Effect of Proposed Changes:

SB 264 generally restricts both governmental entity contracting with certain foreign countries and entities of concern, as well as conveyances of agricultural lands and other interests in real property to foreign principals, the People's Republic of China, and other entities and persons that are affiliated with them. It also amends certain electronic health record statutes to ensure that such records are physically stored in the continental U.S., not overseas.

Prohibition on Governmental Entity Contracting with Entities of Foreign Countries of Concern

Section 1 of the bill creates s. 287.138, F.S., within chapter 287, part I, F.S., which governs commodities, insurance, and contractual services, to prohibit contracting between governmental entities and entities of foreign countries of concern.

The bill defines the following terms for purposes of the new statute:

- "Controlling interest" means possession of the power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person or entity that directly or indirectly has the right to vote 25 percent or more of the voting interests of the company or is entitled to 25 percent or more of its profits is presumed to possess a controlling interest in that company.
- "Department" means the Department of Management Services.
- "Foreign country of concern" means:
  - The People's Republic of China.
  - The Russian Federation.
  - The Islamic Republic of Iran.
  - The Democratic People's Republic of Korea.
  - The Republic of Cuba.
  - The Venezuelan regime of Nicolás Maduro.
  - The Syrian Arab Republic.
  - Any agency of, or any other entity under the significant control of, one of the above-listed foreign countries of concern.
- "Governmental entity" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, but not limited to, the Commission on Ethics, the Public Service Commission, the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

The bill provides that governmental entities may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if:

[50] Section 775.082(3)(d), F.S.
[51] Section 775.083(1)(b), F.S.
[52] *See generally* s. 775.084, F.S. (providing heightened punishments for habitual offenders).

- The entity is owned by the government of a foreign country of concern;
- The government of a foreign country of concern has a controlling interest in the entity; or
- The entity is organized under the laws of or has its principal place of business in a foreign country of concern.

Additionally, the bill provides that:

- Beginning January 1, 2024, a governmental entity may not accept a bid on, a proposal for, or a reply to, or enter into, a contract with an entity which would grant the entity access to an individual's personal identifying information unless the entity provides the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria in the new statute.
- Beginning July 1, 2025:
  - A governmental entity may not extend or renew a contract with one of the entities listed above if the contract would give such entity access to an individual's personal identifying information.
  - When an entity extends or renews a contract with a governmental entity which would grant the entity access to an individual's personal identifying information, the entity must provide the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria in the new statute.

The bill authorizes the Attorney General to bring a civil action in any court of competent jurisdiction against an entity that violates the statute. Violations of the statute may result in:

- A civil penalty equal to twice the amount of the contract for which the entity submitted a bid or proposal for, replied to, or entered into.
- Ineligibility to enter into, renew, or extend any contract, including any grant agreements, with any governmental entity for up to 5 years.
- Ineligibility to receive or renew any license, certification, or credential issued by a governmental entity for up to 5 years.
- Placement on the suspended vendor list.[53]

Any penalties collected from entities that violate the statute must be deposited into the General Revenue Fund.

The bill also authorizes the department to adopt rules to implement the statute, including rules establishing the form for the affidavit required under the statute.

Prohibition on Contracting for an Economic Incentive with a Foreign Entity

Section 2 of the bill creates s. 288.007, F.S., to prohibit governmental entities from entering into contracts for an economic incentive with a foreign entity.

The bill defines the following terms for purposes of the new statute:

- "Controlled by" means having possession of the power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract,

[53] *See* s. 287.1351, F.S. (providing for the suspension of certain vendors).

or otherwise. A person or entity that directly or indirectly has the right to vote 25 percent or more of the voting interests of the company, or that is entitled to 25 percent or more of its profits, is presumed to control the foreign entity.

- "Economic incentive" means all programs administered by, or for which an applicant for the program must seek certification, approval, or other action by, the department under chapter 288, F.S. (governing commercial development and capital improvements), chapter 212, F.S. (governing tax on sales, use, and other transactions), or chapter 220, F.S. (the income tax code), and all local economic development programs, grants, or financial benefits administered by a political subdivision or an agent thereof.
- "Foreign country of concern" has the same meaning as defined later in the bill.[54]
- "Foreign entity" means an entity that is:
  - Owned or controlled by the government of a foreign country of concern; or
  - A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country of concern.
- "Government entity" means a state agency, a political subdivision, or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

The bill provides that a government entity may not knowingly enter into an agreement or contract for an economic incentive with a foreign entity. Before providing any economic incentive, a government entity must require the recipient or applicant to provide the government entity with an affidavit signed under penalty of perjury attesting that the recipient or applicant is not a foreign entity.

The bill also requires the department to adopt rules to administer the new statute, including rules establishing the form for the required affidavit.

Prohibition of Conveyances to Foreign Entities

Section 3 of the bill directs the Division of Law Revision to create part III of chapter 692, F.S., consisting of ss. 692.201, 692.202, 692.203, and 692.204, F.S., to be entitled "Conveyances to Foreign Entities."

Definitions

Section 4 of the bill creates s. 692.201, F.S., which defines the following terms for purposes of part III of chapter 692, F.S.:

- "Agricultural land" means land classified as agricultural under state law.[55]
- "Critical infrastructure facility" means any of the following, if it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized persons:
  - A chemical manufacturing facility.
  - A refinery.

[54] *See* s. 4 of the bill (creating s. 692.201(3), F.S., which defines "foreign country of concern").
[55] *See* s. 193.461, F.S. (providing the agricultural land classification process).

- An electrical power plant, including a substation, switching station, electrical control center, or electric transmission or distribution facility.[56]
- A water intake structure, water treatment facility, wastewater treatment plant, or pump station.
- A natural gas transmission compressor station.
- A liquid natural gas terminal or storage facility.
- A telecommunications central switching office.
- An inland port or other facility or group of facilities serving as a point of intermodal transfer of freight in a specific area physically separated from a seaport.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A seaport.[57]
- A spaceport territory.[58]

- "Foreign country of concern" means:
  - The People's Republic of China.
  - The Russian Federation.
  - The Islamic Republic of Iran.
  - The Democratic People's Republic of Korea.
  - The Republic of Cuba.
  - The Venezuelan regime of Nicolás Maduro.
  - The Syrian Arab Republic.
  - Any agency of, or any other entity under the significant control of, one of the above-listed foreign countries of concern.
- "Foreign principal" means:
  - The government or any official of the government of a foreign country of concern;
  - A political party or member of a political party or any subdivision of a political party in a foreign country of concern;
  - A partnership, association, corporation, organization, or other combination of persons organized under the laws of, or having its principal place of business in, a foreign country of concern; or
  - Any person who is domiciled in a foreign country of concern and is not a citizen of the U.S.
- "Military installation" means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the secretary of a military department or the

[56] *See* s. 403.031(20), F.S. (defining "electrical power plant" as meaning any electrical generating facility that uses any process or fuel and that is owned or operated by an electric utility, as defined in s. 403.503(14), and includes any associated facility that directly supports the operation of the electrical power plant).
[57] *See* s. 311.09(1), F.S. (listing the ports of Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Putnam County, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina).
[58] *See* s. 331.303(18), F.S. (defining "spaceport territory" as the geographical area designated in s. 331.304, F.S., and as amended or changed in accordance with s. 331.329, F.S.; it includes, but is not limited to, the real property located in Brevard County that is included within the 1998 boundaries of Patrick Space Force Base, formerly Patrick Air Force Base; Cape Canaveral Space Force Station, formerly Cape Canaveral Air Force Station; and the John F. Kennedy Space Center).

Secretary of Defense, without regard to the duration of operational control.[59] For purposes of the bill, military installations include armories.[60]

- "Real property" means land, buildings, fixtures, and all other improvements to land.

Purchase of Agricultural Land by Foreign Principals

Section 5 of the bill creates s. 692.202, F.S., to prohibit the purchase of agricultural land by foreign principals.

The bill provides that a foreign principal may not directly or indirectly own or acquire by purchase, grant, devise, or descent agricultural land or any interest in such land in the state. This prohibition does not apply to a foreign principal that acquires agricultural land for a diplomatic purpose that is recognized, acknowledged, or allowed by the Federal Government.

A foreign principal that directly or indirectly owns or acquires agricultural land or any interest in such land in the state before July 1, 2023:

- May continue to own or hold such land or interest, but may not purchase or otherwise acquire by grant, devise, or descent any additional agricultural land or interest in such land in the state.
- Must register with the Department of Agriculture and Consumer Services by January 1, 2024. The department must establish a form for such registration, which, at minimum, must include all of the following:
  - The name of the owner of the agricultural land or the owner of the interest in such land.
  - The address of the agricultural land, the property appraiser's parcel identification number, and the property's legal description.
  - The number of acres of the agricultural land.

A foreign principal that fails to timely file a registration with the department is subject to a civil penalty of $1,000 for each day that the registration is late. The department may place a lien against the unregistered agricultural land for the unpaid balance of any penalties assessed under the new statute.

The bill provides that a foreign principal that acquires agricultural land on or after July 1, 2023, by devise or descent, through the enforcement of security interests, or through the collection of debts must sell, transfer, or otherwise divest itself of the agricultural land within 2 years after acquiring the agricultural land.

At the time of purchase, a buyer of agricultural land, or an interest in such land, must provide an affidavit signed under penalty of perjury attesting to compliance with this section. The failure to obtain or maintain the affidavit does not affect the title or insurability of the title for the agricultural land. The Florida Real Estate Commission must adopt rules to implement this provision, including rules establishing the form for the affidavit required under this provision.

[59] 10 U.S.C. s. 2801(c)(4).
[60] *See* s. 250.01(5), F.S. (defining an "armory" as a building or group of buildings used primarily for housing and training troops or for storing military property, supplies, or records).

The bill provides that an agricultural land, or any interest in such land, that is owned or acquired in violation of the new statute may be forfeited to the state. In connection with such forfeitures, the bill provides:

- The Department of Agriculture and Consumer Services may initiate a civil action in the circuit court of the county in which the property lies.
- Upon filing such action, the clerk must record a lis pendens in accordance with state law.[61] The court must advance the cause on the calendar. The defendant may at any time petition to modify or discharge the lis pendens based upon a finding that there is no probable cause to believe that the agricultural land, or any portion thereof, is owned or held in violation of the new statute.
- If the court finds that the agricultural land, or any portion thereof, is owned or held in violation of the new statute, the court must enter a final judgment of forfeiture vesting title to the agricultural land in the state, subject only to the rights and interests of bona fide lienholders, and such final judgment relates back to the date of the lis pendens.
- The department may sell the agricultural land subject to a final judgment of forfeiture. Any proceeds from the sale must first be paid to any lienholders of the land, followed by payment of any outstanding fines assessed pursuant to the new statute, after which the department must be reimbursed for all costs related to the forfeiture civil action and any costs related to the sale of the land. Any remaining proceeds must be paid to the property owner.
- At any time during the forfeiture proceeding the department may seek an ex parte order of seizure of the agricultural land upon a showing that the defendant's control of the agricultural land constitutes a clear and present danger to the state.

The bill provides the following criminal penalties:

- A foreign principal that purchases or acquires agricultural land or any interest therein in violation of the new statute commits a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days[62] and a $500 fine.[63]
- A person who knowingly sells agricultural land or any interest therein in violation of the new statute commits a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days[64] and a $500 fine.[65]

The bill also requires the Department of Agriculture and Consumer Services to adopt rules to implement the new statute.

Purchase of Real Property around Military Installation and Critical Infrastructure Facilities by Foreign Principals

Section 6 of the bill creates s. 692.203, F.S., to prohibit the purchase of real property around military installations and critical infrastructure facilities by foreign principals.

The bill provides that a foreign principal may not directly or indirectly own or acquire by purchase, grant, devise, or descent any interest in real property within 20 miles of any military

[61] *See* s. 48.23, F.S. (addressing the recordation of notices of lis pendens in particular circumstances).
[62] Section 775.082(4)(b), F.S.
[63] Section 775.083(1)(e), F.S.
[64] Section 775.082(4)(b), F.S.
[65] Section 775.083(1)(e), F.S.

installation or critical infrastructure facility in the state. This prohibition does not apply to a foreign principal that acquires real property for a diplomatic purpose that is recognized, acknowledged, or allowed by the Federal Government.

A foreign principal that directly or indirectly owns or acquires any interest in real property within 20 miles of any military installation or critical infrastructure facility in the state before July 1, 2023, may continue to own or hold such real property, but may not purchase or otherwise acquire by grant, devise, or descent any additional real property within 20 miles of any military installation or critical infrastructure facility in the state.

The bill provides that a foreign principal that owns or acquires real property within 20 miles of any military installation or critical infrastructure facility in the state before July 1, 2023, must register with the Department of Economic Opportunity by January 1, 2024. The department must establish a form for such registration which, at a minimum, must include all of the following:

- The name of the owner of the real property.
- The address of the real property, the property appraiser's parcel identification number, and the property's legal description.

A foreign principal that fails to timely file a registration with the department is subject to a civil penalty of $1,000 for each day that the registration is late. The department may place a lien against the unregistered real property for the unpaid balance of any penalties assessed under this provision.

The bill provides that a foreign principal that acquires real property, or any interest therein, which is within 20 miles of any military installation or critical infrastructure facility in the state on or after July 1, 2023, by devise or descent, through the enforcement of security interests, or through the collection of debts must sell, transfer, or otherwise divest itself of such real property within 2 years after acquiring the real property.

At the time of purchase, a buyer of real property that is located within 20 miles of any military installation or critical infrastructure facility in the state must provide an affidavit signed under penalty of perjury attesting to compliance with the new statute. The failure to obtain or maintain the affidavit does not affect the title or insurability of the title for the real property. The Florida Real Estate Commission must adopt rules to implement this provision, including rules establishing the form for the affidavit required under this provision.

The bill provides that if any real property is owned or acquired in violation of the new statute, it may be forfeited to the state. In connection with such forfeitures, the bill provides:

- The Department of Economic Opportunity may initiate a civil action in the circuit court of the county in which the property lies for the forfeiture of the real property or any interest therein.
- Upon filing such action, the clerk must record a lis pendens in accordance with state law.[66] The court must advance the cause on the calendar. The defendant may at any time petition to modify or discharge the lis pendens based upon a finding that there is no probable cause to

[66] *See* s. 48.23, F.S. (addressing the recordation of notices of lis pendens in particular circumstances).

believe that the real property, or any portion thereof, is owned or held in violation of the new statute.

- If the court finds that the real property, or any portion thereof, is owned or held in violation of the new statute, the court must enter a final judgment of forfeiture vesting title to the real property in the state, subject only to the rights and interests of bona fide lienholders, and such final judgment relates back to the date of the lis pendens.
- The department may sell the real property subject to a final judgment of forfeiture. Any proceeds from the sale must first be paid to any lienholders of the land, followed by payment of any outstanding fines assessed pursuant to the new statute, after which the department must be reimbursed for all costs related to the forfeiture civil action and any costs related to the sale of the land. Any remaining proceeds must be paid to the property owner.
- At any time during the forfeiture proceeding the department may seek an ex parte order of seizure of the real property upon a showing that the defendant's control of the real property constitutes a clear and present danger to the state.

The bill provides the following criminal penalties:

- A foreign principal that purchases or acquires real property or any interest therein in violation of the new statute commits a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days[67] and a $500 fine.[68]
- A person who knowingly sells real property or any interest therein in violation of this section commits a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days[69] and a $500 fine.[70]

The bill also requires the Department of Economic Opportunity to adopt rules to implement the new statute.

Purchase or Acquisition of Real Property by the People's Republic of China

Section 7 of the bill creates s. 692.204, F.S., to prohibit the purchase or acquisition of real property by the People's Republic of China.

The bill prohibits the following persons or entities from directly or indirectly owning or acquiring by purchase, grant, devise, or descent any interest in real property in the state:

- The People's Republic of China, the Chinese Communist Party, or any official or member of the People's Republic of China or the Chinese Communist Party.
- Any other political party or member of a political party or a subdivision of a political party in the People's Republic of China.
- A partnership, an association, a corporation, an organization, or any other combination of persons organized under the laws of or having its principal place of business in the People's Republic of China.
- Any person who is domiciled in the People's Republic of China and who is not a citizen of the U.S.

[67] Section 775.082(4)(b), F.S.
[68] Section 775.083(1)(e), F.S.
[69] Section 775.082(4)(b), F.S.
[70] Section 775.083(1)(e), F.S.

This prohibition does not apply to a person or entity of the People's Republic of China that acquires real property for a diplomatic purpose that is recognized, acknowledged, or allowed by the Federal Government.

Any person or entity described above that directly or indirectly owns or acquires any interest in real property in the state before July 1, 2023, may continue to own or hold such real property, but may not purchase or otherwise acquire by grant, devise, or descent any additional real property in the state.

The bill provides that any person or entity described above that owns or acquires real property in the state before July 1, 2023, must register with the Department of Economic Opportunity by January 1, 2024. The department must establish a form for such registration which, at a minimum, must include all of the following:

- The name of the owner of the real property.
- The address of the real property, the property appraiser's parcel identification number, and the property's legal description.

A person or entity that fails to timely file a registration with the department is subject to a civil penalty of $1,000 for each day that the registration is late. The department may place a lien against the unregistered real property for the unpaid balance of any penalties assessed under this paragraph.

The bill provides that a person or entity that acquires real property in the state on or after July 1, 2023, by devise or descent, through the enforcement of security interests, or through the collection of debts must sell, transfer, or otherwise divest itself of such real property within 2 years after acquiring the real property unless the person or entity acquired the real property for a diplomatic purpose that is recognized, acknowledged, or allowed by the Federal Government.

At the time of purchase, a buyer of real property in the state must provide an affidavit signed under penalty of perjury attesting to compliance with the new statute. The failure to obtain or maintain the affidavit does not affect the title or insurability of the title for the real property. The Florida Real Estate Commission must adopt rules to implement this subsection, including rules establishing the form for the affidavit required under this subsection.

The bill provides that if any real property is owned or acquired in violation of the new statute, it may be forfeited to the state. In connection with such forfeitures, the bill provides:

- The Department of Economic Opportunity may initiate a civil action in the circuit court of the county in which the property lies for the forfeiture of the real property or any interest therein.
- Upon filing such action, the clerk must record a lis pendens in accordance with state law.[71] The court must advance the cause on the calendar. The defendant may at any time petition to modify or discharge the lis pendens based upon a finding that there is no probable cause to believe that the real property, or any portion thereof, is owned or held in violation of the new statute.

[71] *See* s. 48.23, F.S. (addressing the recordation of notices of lis pendens in particular circumstances).

- If the court finds that the real property, or any portion thereof, is owned or held in violation of the new statute, the court must enter a final judgment of forfeiture vesting title to the real property in the state, subject only to the rights and interests of bona fide lienholders, and such final judgment relates back to the date of the lis pendens.
- The department may sell the real property subject to a final judgment of forfeiture. Any proceeds from the sale must first be paid to any lienholders of the land, followed by payment of any outstanding fines assessed pursuant to the new statute, after which the department must be reimbursed for all costs related to the forfeiture civil action and any costs related to the sale of the land. Any remaining proceeds must be paid to the property owner.
- At any time during the forfeiture proceeding the department may seek an ex parte order of seizure of the real property upon a showing that the defendant's control of the real property constitutes a clear and present danger to the state.

The bill provides the following criminal penalties:

- A violation of this section constitutes a felony of the third degree, punishable by a term of imprisonment not exceeding 5 years[72] and a $5,000 fine,[73] or possibly more under the habitual offender statute.[74]
- A person who sells real property or any interest therein in violation of the new statute commits a misdemeanor of the first degree, punishable by a term of imprisonment not exceeding 1 year[75] and a $1,000 fine.[76]

The bill also requires the Department of Economic Opportunity to adopt rules to implement the new statute.

Amendments to the Florida Electronic Health Records Act

Section 8 of the bill amends s. 408.051, F.S., the Florida Electronic Health Records Exchange Act (Act), by adding two definitions and by requiring that the offsite storage of certain personal medical information be physically maintained in the continental U.S.

First, for purposes of the Act, the bill incorporates the definition for "cloud computing" found in chapter 282, part I, F.S., which governs information technology management. That definition[77] provides that cloud computing has the same meaning as provided in Special Publication 800-145 issued by the National Institute of Standards and Technology, which reads as follows:

> Cloud computing is a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or

[72] Section 775.082(3)(e), F.S.
[73] Section 775.083(1)(c), F.S.
[74] *See generally* s. 775.084, F.S. (providing heightened punishments for habitual offenders).
[75] Section 775.082(4)(a), F.S.
[76] Section 775.083(1)(d), F.S.
[77] Section 282.0041(5), F.S.

service provider interaction. This cloud model is composed of five essential characteristics, three service models, and four deployment models.[78]

Second, for purposes of the Act, the bill defines the term "health care provider" as including all of the following:

- Any provider as defined in the Health Care Licensing Procedures Act;[79]
- Any health care practitioner as defined in chapter 456, F.S., which governs health professions and occupations;[80]
- Any health care professional certified under the Radiological Personnel Certification Act;[81]
- Any home health aide as defined in the Home Health Services Act;[82]
- Any service provider as defined in the Florida Mental Health Act,[83] and the service provider's clinical and nonclinical staff who provide inpatient or outpatient services;
- Any licensed continuing care facility;[84] and
- Any pharmacy permitted under the Florida Pharmacy Act.[85]

Third, the bill amends the Act to provide that in addition to complying with certain federal standards regulating the privacy of individually identifiable health information,[86] a health care provider that utilizes certified electronic health record technology must ensure that all patient information stored in an offsite physical or virtual environment, including through a third-party or subcontracted computing facility or an entity providing cloud computing services, is physically maintained in the continental U.S. The bill applies this provision to all qualified electronic health records that are stored using any technology that can allow information to be electronically retrieved, accessed, or transmitted.

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[78] U.S. Department of Commerce, National Institute of Standards and Technology, *Special Publication 800-145 (The NIST Definition of Cloud Computing)* (Sept. 2011), *available at* https://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf (also identifying the referenced five essential characteristics, three service models, and four deployment models) (footnotes omitted).

[79] *See* s. 408.803(12), F.S. (defining "provider" as any activity, service, agency, or facility regulated by Agency for Health Care Administration and listed in s. 408.802, F.S.).

[80] *See* s. 456.001(4), F.S. (defining "health care practitioner" as any person licensed under one of the listed statutes).

[81] Chapter 468, part IV, F.S.

[82] *See* s. 400.462, F.S. (defining "home health aide" as a person who is trained or qualified, as provided by rule, and who provides hands-on personal care, performs simple procedures as an extension of therapy or nursing services, assists in ambulation or exercises, assists in administering medications as permitted in rule and for which the person has received training established by the agency under part III (regulating home health services), or performs tasks delegated to him or her under ch. 464, F.S. (regulating nursing)).

[83] *See* s. 394.455(45), F.S. (defining "service provider" as a receiving facility, a facility licensed under ch. 397, F.S. (governing substance abuse services), a treatment facility, an entity under contract with the department to provide mental health or substance abuse services, a community mental health center or clinic, a psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a psychiatrist, an advanced practice registered nurse, a psychiatric nurse, or a qualified professional as defined in s. 39.01, F.S. (referencing licensed physicians, physician assistants, psychiatrists, psychologists, and psychiatric nurses)).

[84] *See* ch. 651, F.S. (governing continuing care contracts).

[85] Chapter 465, F.S.

[86] 45 C.F.R. pts. 160 and 164 (subparts A and C).

Amendments to the Health Care Licensing Procedures Act

Section 9 of the bill amends s. 408.810, F.S., which provides certain minimum licensure requirements for health care providers.[87]

The bill provides that a licensee must sign an affidavit at the time of his or her initial application for a license, and on any renewal applications thereafter, that attests under penalty of perjury that he or she is in compliance with the bill, specifically the requirement in the bill that health care providers using certified electronic health record technology ensure that all patient information stored in an offsite physical or virtual environment is physically maintained in the continental U.S. The licensee must remain in compliance with this requirement or be subject to disciplinary action by the agency.

The licensee must also ensure that a person or entity who possesses a controlling interest in the licensee does not also hold, either directly or indirectly, regardless of ownership structure, an interest in an entity that has a business relationship with a foreign country of concern or that is subject to the statute prohibiting contracting with scrutinized companies.[88]

For purposes of this provision, the bill defines the following terms:
- "Business relationship" means engaging in commerce in any form, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commence.
- "Foreign country of concern" has the same meaning as provided earlier in the bill.[89]
- Having an "interest" in an entity means having any direct or indirect investment in or loan to the entity valued at 5 percent or more of the entity's net worth, or any form of direct or indirect control exerting similar or greater influence on the governance of the entity.[90]

Amendments to the Statute Criminalizing Threats and Extortion

Section 10 of the bill amends s. 836.05, F.S., which criminalizes threats and extortion, to provide that a person who commits a violation of the statute and at the time of the violation is acting as a foreign agent as defined in state law,[91] with the intent of benefitting a foreign country of concern as defined earlier in the bill,[92] commits a felony of the first degree, punishable by a term of imprisonment of not exceeding 30 years[93] and a $10,000 fine,[94] or possibly more under the habitual offender statute.[95]

[87] *See supra* note 79 (defining providers); *see also* s. 408.802, F.S. (listing regulated providers).
[88] Section 287.135, F.S.
[89] *See* s. 4 of the bill (creating s. 692.201(3), F.S., which defines "foreign country of concern").
[90] *See* s. 286.101(1), F.S. (defining "interest").
[91] *See* s. 812.081(1)(b), F.S. (defining "foreign agent" as any officer, employee, proxy, servant, delegate, or representative of a foreign government).
[92] *See* s. 4 of the bill (creating s. 692.201(3), F.S., which defines "foreign country of concern").
[93] Section 775.082(3)(b)1., F.S.
[94] Section 775.083(1)(b), F.S.
[95] *See generally* s. 775.084, F.S. (providing heightened punishments for habitual offenders).

Effective Date

The bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

A state's power to apply its law exclusively to its alien inhabitants as a class is confined to narrow limits. However, each state, in the absence of any treaty provision to the contrary, may deny to aliens the right to own land within its border.[96]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, governmental entities are prohibited from knowingly entering into contracts for an economic incentive with a foreign entity. Accordingly, foreign entities (as defined in the bill) will no longer be able to avail themselves of such economic incentives in connection with their projects.

The bill provides that foreign principals who acquired agricultural land or land within 20 miles of a military installation or critical infrastructure facility before July 1, 2023 may

[96] *See Graham v. Ramani*, 383 So. 2d 634, 635 (Fla. 1980) (recognizing that the U.S. Supreme Court has upheld statutes denying aliens the right to acquire land and citing in support *Terrace v. Thompson*, 263 U.S. 197 (1923); *Terrace* upheld a state of Washington statute prohibiting the ownership of land within the state by nondeclarant aliens, finding that the "privilege of owning or controlling agricultural land within the state" and the "allegiance of those who own, occupy and use the farm lands within its borders are matters of highest importance and affect the safety and power of the state itself" (*id.* at 221)).

continue to own those lands, but may not expand upon their ownership after that date. Similarly, Chinese businesses, and persons who are domiciled in China and not U.S. citizens, who acquired real property before July 1, 2023 may continue to own those lands, but may not expand upon their ownership after that date. To the extent any of these foreign principals, businesses, or persons' business plans assumed future expansions of land ownership, those plans will be negatively impacted by the bill.

The bill requires health care providers that use certified electronic health care technology to ensure that all patient information stored in an offsite physical or virtual environment, including through a third-party or subcontracted facility or an entity providing cloud computing services, is maintained in the continental U.S. To the extent such patient information is not already maintained in the continental U.S., health care providers will incur costs moving that information into the continental U.S.

C. Government Sector Impact:

Under the bill, governmental entities may not contract with entities of foreign countries of concern. To the extent contracting with entities of foreign countries of concern might have resulted in more favorable contractual terms than contracting with other entities, governmental entities will be negatively impacted by the bill.

The bill authorizes the Attorney General, Department of Agriculture and Consumer Services, and the Department of Economic Opportunity to enforce certain affidavit preparation and property forfeiture provisions in the bill. Additionally, the bill requires the Department of Management Services, the Florida Real Estate Commission, and the Department of Economic Opportunity to adopt rules to implement various provisions of the bill. Although these state agencies will incur costs associated with these efforts, it is anticipated that they will be minimal and absorbed by their existing budget allocations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 287.138, 288.007, 692.201, 692.202, 692.203, and 692.204.

This bill substantially amends the following sections of the Florida Statutes: 408.051, 408.810, and 836.05.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

Exhibit J

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

YIFAN SHEN, an individual, ZHIMING XU, an individual, XINXI WANG, an individual, YONGXIN LIU, an individual, and MULTI-CHOICE REALTY LLC, a limited liability corporation,

Plaintiffs,

v.

WILTON SIMPSON, in his official capacity as Commissioner of Agriculture for the Florida Department of Agriculture and Consumer Affairs, MEREDITH IVEY, in her official capacity as Acting Secretary of the Florida Department of Economic Opportunity, PATRICIA FITZGERALD, in her official capacity as Chair of the Florida Real Estate Commission, R.J. LARIZZA, in his official capacity as State Attorney for the 7th Judicial Circuit, MONIQUE WORRELL, in her official capacity as State Attorney for the 9th Judicial Circuit, KATHERINE RUNDLE, in her official capacity as State Attorney for the 11th Judicial Circuit,

Defendants.

Case No. 4:23-cv-208-AW-MAF

SUPPLEMENTAL DECLARATION OF JIAN SONG

I, Jian Song, hereby declare as follows:

1. I am authorized on behalf of Multi-Choice Realty, LLC ("Multi-Choice Realty"), a plaintiff in the above-captioned action, to make this supplemental declaration in support of Plaintiffs' Motion for a Preliminary Injunction. I have personal knowledge of the facts stated in this declaration, and if called to testify in this matter, I could and would competently testify to the facts contained herein.

2. Multi-Choice Realty's customers—which include Chinese people who live in China and are neither citizens nor legal permanent residents of the United States; and Chinese people who reside in the United States on a variety of non-immigrant visas and are at substantial risk of being deemed "domiciled" in China—are already being harmed by SB 264.

3. In addition to the harms described in my earlier declaration, mortgage lenders are now refusing to originate loans in the state of Florida for Chinese citizens, including a Multi-Choice Realty customer.

4. Attached hereto as Exhibit 1 is a true and correct copy of email correspondence sent from mortgage broker Liu Han of Leader Funding to me, at my email address mymultichoice@gmail.com, dated July 6, 2023. The email contains forwarded correspondence from Jason Sheridan of Acra Lending to Ms. Han, dated July 5, 2023.

5. In the forwarded correspondence, Acra Lending states that it "can not proceed with the new loan" for a Multi-Choice Realty client, Qing Zhou, who is seeking to purchase a residential property in Florida. It continues: "The original loan would have needed to fund on 6/30/23. Due to recent changes in Florida law, Acra is not able to originate new loans in Florida for Chinese citizens."

6. Specifically, because of SB 264, Acra Lending is refusing to provide a mortgage to Qing Zhou, who is a Chinese citizen, ethnically Chinese, and

domiciled in China. Mr. Zhou is neither a citizen nor legal permanent resident of the United States; he has a tourist visa to enter the United States and is seeking to purchase property in Florida with the assistance of Multi-Choice Realty.

7. Attached hereto as Exhibit 2 is a true and correct copy of email correspondence sent from Ms. Han of Leader Funding to me, at my email address mymultichoice@gmail.com, dated July 6, 2023. The email contains forwarded email correspondence from Oliver Burik of AD Mortgage to Ms. Han, dated July 6, 2023.

8. In the forwarded correspondence, AD Mortgage states that it "won't be able to originate . . . any loans really in the state of Florida for Chinese citizens."

9. Specifically, because of SB 264, AD Mortgage is refusing to provide a mortgage to Qing Zhou, the same Multi-Choice Realty client described above.

I declare under penalty of perjury under the laws of the United States and the State of Florida that the foregoing is true and correct.

Executed this 11th day of July, 2023.

/s/ *Jian Song*

Jian Song

EXHIBIT 1

---------- Forwarded message ---------
From: **Liu Han** <liu.han@leaderfunding.com>
Date: Thu, Jul 6, 2023 at 11:05 PM
Subject: Fwd: Appraisal transfer
To: <mymultichoice@gmail.com>

Fyi

****

HAN, Liu, CPA
韩柳
President, Principal Loan Consultant
Leader Funding, Inc.
15200 Shady Grove RD, STE308, Rockville, MD20850
O: 301-660-3399 Fax: 301-769-6658
C: 703-655-6161
liu.han@leaderfunding.com
Wechat ID: Willow6621
NMLS # 208136
****

Begin forwarded message:

> **From:** Jason Sheridan <jason.sheridan@acralending.com>
> **Date:** July 5, 2023 at 11:15:46 AM EDT
> **To:** Liu Han <liu.han@leaderfunding.com>
> **Cc:** Lynn Liu <lynn@leaderfunding.com>
> **Subject: RE: Appraisal transfer**
>
> Good Morning,
>
> I have reviewed the transaction and unfortunately we can not proceed with the new loan. The original loan would have needed to fund on 6/30/23.
>
> Due to recent changes in Florida law, Acra is not able to originate new loans in Florida for Chinese citizens.
>
> See note from my system regarding the program.
>
> Please reach out with any questions.

	06/01/2023 7:27 AM		< Lisa LC Curry : 6/01/2023 7:27 AM CDT > Approval u is no longer available in the state of Florida. Existing a be directed to Trisa Nelson or Lisa Curry Updated App

Thank You,

Jason Sheridan

Vice President, Area Sales Manager

Acra LENDING

The Leader in Today's Non-QM Programs

(949) 900-6630 ext. 111

(951) 840-7959 cell

Jason.Sheridan@acralending.com

3 Ada Parkway, STE 200A

Irvine, CA 92618

FIX N FLIP / FIX N KEEP, BRIDGE LOANS QUOTE REQUEST

Quick Qu

Mortgagee Clause

Citadel Servicing Corporation DBA Acra Lending

ISAOA/ATIMA

3 Ada Parkway, STE 200A

Irvine, CA 92618

Review our Privacy Policies at www.acralending.com/privacy-policy

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From: Liu Han <liu.han@leaderfunding.com>
Sent: Monday, July 3, 2023 3:23 PM
To: Jason Sheridan <jason.sheridan@acralending.com>
Cc: Lynn Liu <lynn@leaderfunding.com>
Subject: Appraisal transfer

Jason,

For appraisal report as attached, can you please advise whether Acra Lending, the wholesale lender, or Financial Triangle, the mortgage broker, should provide the appraisal transfer letter to another wholesale lender. Thanks!

****

HAN, Liu, CPA

韩柳

President, Principal Loan Consultant

Leader Funding, Inc.

15200 Shady Grove RD, STE308, Rockville, MD20850

O: 301-660-3399 Fax: 301-769-6658

C: 703-655-6161

liu.han@leaderfunding.com

Wechat ID: Willow6621

NMLS # 208136

****

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James Song(宋俭)
Broker/Founder of
Multi Choice Realty, LLC
1536 Sunrise Plaza Dr. Suite 102. Clermont FL 34714
www.mymultichoice.com
Cell: 1-407-405-3140
Wechat ID: js4074053140

EXHIBIT 2

---------- Forwarded message ---------
From: **Liu Han** <liu.han@leaderfunding.com>

Date: Thu, Jul 6, 2023 at 11:04 PM
Subject: Fwd: Zhou, Qing - FL - Chinese foreign national - contract
To: <mymultichoice@gmail.com>

Fyi

****
HAN, Liu, CPA
韩柳
President, Principal Loan Consultant
Leader Funding, Inc.
15200 Shady Grove RD, STE308, Rockville, MD20850
O: 301-660-3399 Fax: 301-769-6658
C: 703-655-6161
liu.han@leaderfunding.com
Wechat ID: Willow6621
NMLS # 208136
****

Begin forwarded message:

> **From:** Oliver Burik <oliver.burik@admortgage.com>
> **Date:** July 6, 2023 at 8:15:50 AM EDT
> **To:** Liu Han <liu.han@leaderfunding.com>
> **Subject: Re: Zhou ing FL Chinese foreign national contract**
>
> Good morning Liu,
>
> I'm afraid we must comply with that new law.
> We won't be able to originate that loan if the borrower is a citizen of China, or any loans really in the state of Florida for Chinese citizens.
>
> Let me know if you have something else, I can help you with.
> Best regards,
>
> **From:** Oliver Burik <oliver.burik@admortgage.com>
> **Sent:** Wednesday, July 5, 2023 5:20 PM
> **To:** Liu Han <liu.han@leaderfunding.com>
> **Subject:** Re: Zhou, Qing - FL - Chinese foreign national - contract
>
> Hi Liu,
>
> I sent an email to our Legal department regarding that question. I should receive an answer shortly.

AD Mortgage

Modify Lock
Our programs
Quick Pricer

Oliver Burik
Wholesale Account Executive

D: 646.362.3044
O: 305.760.7000 ext.8424
oliver.burik@admortgage.com

From: Liu Han <liu.han@leaderfunding.com>
Date: Wednesday, 5. July 2023 at 23:45
To: Oliver Burik <oliver.burik@admortgage.com>
Subject: Re: Zhou, Qing - FL - Chinese foreign national - contract

on ADM Sender

Oliver,

You know Florida just passed a law which does not allow China citizens to purchase properties in Florida since 7/1/23. But this contract was signed in 2019. Can you please ask your legal department if your company can do this foreign national's DSCR loan Thanks!

****

HAN, Liu, CPA

韩柳

President, Principal Loan Consultant

Leader Funding, Inc.

15200 Shady Grove RD, STE308, Rockville, MD20850

O: 301-660-3399 Fax: 301-769-6658

C: 703-655-6161

liu.han@leaderfunding.com

Wechat ID: Willow6621

NMLS # 208136

****

--

James Song(宋俭)
Broker/Founder of
Multi Choice Realty, LLC
1536 Sunrise Plaza Dr. Suite 102. Clermont FL 34714
www.mymultichoice.com
Cell: 1-407-405-3140
Wechat ID: js4074053140

Exhibit K

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

YIFAN SHEN, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 4:23-cv-208-AW-MAF
	)	
WILTON SIMPSON, *et al.*,	)	
	)	
Defendants.	)	
_____	)	

STATEMENT OF INTEREST OF THE UNITED STATES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

The State of Florida recently enacted a statute that imposes new prohibitions on owning or purchasing land in the State. Among other provisions, Senate Bill 264 ("SB 264") prohibits individuals who are not U.S. citizens or permanent residents and whose "domicile" is in China, or other so-called "foreign countries of concern," from owning or purchasing real property. The United States respectfully submits this Statement of Interest under 28 U.S.C. § 517[1] to advise the Court of the United States' view that the provisions of SB 264 to be codified at Florida Statutes

[1] Under 28 U.S.C. § 517, "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States."

§§ 692.201–.205[2] violate the Fair Housing Act ("FHA") and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. These unlawful provisions will cause serious harm to people simply because of their national origin, contravene federal civil rights laws, undermine constitutional rights, and will not advance the State's purported goal of increasing public safety. Plaintiffs are likely to succeed on the merits of these claims challenging the provisions of SB 264 that restrict and prohibit land ownership. Accordingly, the United States supports Plaintiffs' motion to enjoin Defendants from implementing and enforcing these provisions.

INTEREST OF THE UNITED STATES

This case implicates important federal interests. The United States Department of Justice has enforcement authority under the FHA. 42 U.S.C. §§ 3613(e), 3614. The United States thus has a strong interest in eradicating housing discrimination and ensuring the correct interpretation and application of the FHA. *See, e.g.*, Statement of Interest of the United States, *Louis v. SafeRent Solutions, LLC*, No. 22-CV-10800 (D. Mass. Jan. 9, 2023). In addition, the United States has a strong interest in matters that raise challenges of public importance under the Fourteenth Amendment of the United States Constitution. *See, e.g.*, Statement of

[2] *See* 2023 Fla. Laws ch. 2023-33, §§ 3-8, at 5–15 (to be codified at Fla. Stat. §§ 692.201–.205). These are the provisions of the bill that Plaintiffs seek to preliminarily enjoin. *See* Pls.' Corr. Emergency Mot. for Prelim. Inj., ECF No. 23, at 13 n.2.

Interest of the United States, *Poe v. Drummond*, No. 23-CV-00177 (N.D. Okla. June 9, 2023); United States' Statement of Interest, *Arnold v. Barber's Hill Indep. Sch. Dist.*, No. 4:20-CV-01802 (S.D. Tex. July 23, 2021).

BACKGROUND

On May 8, 2023, Florida's Governor signed SB 264 into law. SB 264 imposes new restrictions on persons and entities from "foreign countries of concern," defined as China, Russia, Iran, North Korea, Cuba, Venezuela[3], and Syria. SB 264 prohibits governmental entities in Florida from contracting with entities of these countries or entering into any agreement that would grant economic incentives to these countries; and, relevant to this lawsuit, creates two new sets of restrictions on land ownership in Florida. *See* 2023 Fla. Laws ch. 2023-33 (to be codified at Fla. Stat. §§ 287.138, 408.810, 692.201–.205, and 836.05).[4]

The first set of land ownership restrictions prohibits "foreign principals" from owning or acquiring agricultural land or real property within ten miles of any "military installation" or "critical infrastructure facility" in Florida. *See id.* §§ 692.202, .203(1). "Foreign principals" include individuals whose "domicile[]" is in

[3] Specifically, the bill refers to "the Venezuelan regime of Nicolás Maduro." *See* Fla. Stat. § 287.138(1)(c). It does not define any criteria by which an individual is considered to be connected with that regime. *See generally id.*

[4] Citations to provisions of SB 264 are to the statutory sections where it is to be codified. Other citations to Florida laws are to the 2022 Florida Statutes.

a "foreign country of concern" and who are not U.S. citizens or lawful permanent residents. *See id.* §§ 287.138(1)(c), 692.201(4)(d). An exception permits foreign principals who are "natural person[s]" with a valid non-tourist visa or who have been granted asylum to purchase one residential real property if the property is less than two acres in size and not within five miles of a military installation. *Id.* § 692.203(4). Existing owners and new purchasers who fall within the bill's definition of "foreign principal" are required to register real property on or within ten miles of any military installation or critical infrastructure facility with Florida's Department of Economic Opportunity. *Id.* §§ 692.202(3)(a), .203(3)(a).

The second set of restrictions specifically prohibits the "[p]urchase or acquisition of real property by the People's Republic of China." *Id.* § 692.204. In addition to Chinese political and corporate entities, *see id.* §§ 692.204(1)(a)(1)–(3), (5), "[a]ny person who is domiciled in the People's Republic of China and who is not a citizen or lawful permanent resident of the United States" is prohibited from purchasing or owning any real property in the State, *id.* § 692.204(1)(a)(4). This prohibition has the same narrow two-acre residential property exception described above for "natural person[s]" with a valid non-tourist visa or who have been granted asylum, and the same requirement to register property with the State. *See id.* §§ 692.204(2), (4).

SB 264 imposes both civil and criminal penalties for violations of the land ownership provisions. Failure to comply with the restrictions and registration requirements may result in civil penalties, including a fine of $1,000 for each day that registration is delayed and forfeiture of any real property owned or acquired in violation of the statute. *Id.* §§ 692.202(3)(b), .202(6), .203(3)(b), .203(7), .204(4)(b), .204(7). Foreign principals or property sellers who violate the first set of restrictions may be charged with a second-degree misdemeanor, *id.* §§ 692.202(7)–(8), .203(8)–(9), punishable by up to 60 days' imprisonment and a $500 fine, *id.* §§ 775.082(4)(b), .083(1)(e). The Chinese-specific prohibitions impose more severe criminal sanctions: A person who "knowingly sells real property" to Chinese persons or entities in violation of the law commits a misdemeanor of the first degree, *id.* § 692.204(9), punishable by up to one year of imprisonment and a $1,000 fine, *id.* §§ 775.082(4)(a), .083(1)(d). Chinese purchasers of land in violation of the law commit a third-degree felony, *id.* § 692.204(8), punishable by up to five years in prison and a $5,000 fine, *id.* §§ 775.082(3)(e), .083(1)(c). If it is not enjoined, the law will go into effect on July 1, 2023.

On May 22, 2023, Plaintiffs Yifan Shen, Zhiming Xu, Xinxi Wang, Yongxin Liu, and Multi-Choice Realty, LLC filed a Complaint alleging claims under the FHA, the Fourteenth Amendment of the United States Constitution, and the

Supremacy Clause of Article VI of the United States Constitution. Compl., ECF No. 1. On June 5, 2023, Plaintiffs filed their First Amended Complaint. First Am. Compl., ECF No. 17. On June 6, 2023, Plaintiffs moved to enjoin Defendants from implementing and enforcing the portions of SB 264 to be codified at Florida Statutes §§ 692.201–.205, which establish new restrictions and prohibitions on land ownership. Pls.' Emergency Mot. for Prelim. Inj., ECF No. 21. Plaintiffs filed a corrected version of their motion on June 7, 2023. Pls.' Corr. Emergency Mot. for Prelim. Inj., ECF No. 23 ("Pls.' Mot.").

ARGUMENT

A plaintiff seeking a preliminary injunction must show that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). Because Plaintiffs are likely to succeed on the merits of their Fair Housing Act and Equal Protection Clause claims, the Court should enjoin the portions of SB 264 establishing restrictions and prohibitions on land ownership, *see* Fla. Stat. §§ 692.201–.205.[5]

[5] This Statement of Interest focuses only on the merits of Plaintiffs' Fair Housing Act and equal protection claims. The United States does not take a position at this time on the merits of any claims not addressed in this Statement of Interest.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR FAIR HOUSING ACT CLAIMS

"[T]he Fair Housing Act of 1968 . . . broadly prohibits discrimination in housing throughout the Nation." *Gladstone, Realtors v. Vill. of Bellwood*, 441 U.S. 91, 93 (1979); *see* 42 U.S.C. § 3601 ("It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."). The FHA prohibits housing discrimination on the basis of race, color, religion, sex, familial status, disability, and national origin. 42 U.S.C. §§ 3604, 3605, 3606, 3617. The FHA makes it unlawful to "refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling[6] to any person" because of national origin. *Id.* § 3604(a). The FHA also prohibits discriminating "against any person in making available [residential real estate-related transactions], or in the terms or conditions of such a transaction" because of national origin, including "[t]he selling, brokering, or appraising of residential real property." *Id.* § 3605(a), (b)(2).

[6] The FHA defines "dwelling" as "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof." 42 U.S.C. § 3602(b). SB 264 restricts and prohibits the purchase of "real property," defined as "land, buildings, fixtures, and all other improvements to land," Fla. Stat. § 692.201(6). The United States' FHA analysis applies to the subset of "real property" that falls within the FHA's definition of "dwelling," *i.e.*, buildings, structures, and land "designed or intended for occupancy as . . . a residence," 42 U.S.C. § 3602(b).

The FHA's provisions cover a wide range of discriminatory housing practices, including discrimination in the "terms, conditions, or privileges" of a sale or rental, *see* 42 U.S.C. § 3604(b), and discriminatory advertising, *see id.* § 3604(c); *see also, e.g.*, *Georgia State Conf. of the NAACP v. City of LaGrange*, 940 F.3d 627, 631–32 (11th Cir. 2019) ("the language of the FHA is broad and inclusive, prohibits a wide range of conduct, has a broad remedial purpose, and is written in decidedly far-reaching terms" (citation and internal quotation marks omitted)). The FHA also declares that "any law of a State . . . that purports to require or permit any action that would be a discriminatory housing practice under [the FHA] shall to that extent be invalid." 42 U.S.C. § 3615.

As addressed below, SB 264 violates Sections 3604 and 3605 of the FHA.[7] Moreover, because SB 264 is a state law that "require[s]" actions constituting "discriminatory housing practice[s]," the law is invalid under Section 3615 of the FHA.

A. SB 264 violates Section 3604 and Section 3605 of the FHA.

The language of SB 264 facially discriminates on the basis of national origin. National origin "refers to the country where a person was born, or, more broadly, the country from which his or her ancestors came." *Espinoza v. Farah*

[7] To the extent Plaintiffs' First Amended Complaint alleges additional violations of the FHA, the United States takes no position on the those claims in this statement, except to note that enactment of SB 264 may lead to additional FHA violations in the future. *See* note 10, *infra*.

Mfg. Co., 414 U.S. 86, 88 (1973) (interpreting Title VII); *see also United States v. Kras*, 409 U.S. 434, 446 (1973) (using the term "nationality" synonymously with national origin). "The issue in a national origin case is whether the defendant is willing to deal with people from some countries but not others." Robert G. Schwemm, *Housing Discrimination Law and Litigation* § 11A:1 (2022).

SB 264 imposes property ownership restrictions on individuals who are (1) not citizens or permanent residents of the United States and (2) whose "domicile" is in a specific subset of countries—China, Russia, Iran, North Korea, Cuba, Venezuela, and Syria—with the most severe prohibitions and penalties imposed on individuals from China. *See* Fla. Stat. §§ 692.202, .203, .204. While the bill does not clearly lay out which individuals from these seven countries will be subject to SB 264's restrictions, prohibitions, and property registration requirements, nonimmigrant visa holders from these seven countries are likely to be the most affected.[8] *See* First Am. Compl. ¶¶ 60–62.

[8] SB 264 refers to individuals who are "domiciled" in a "country of concern." Fla. Stat. §§ 692.201(4)(d), .204(1)(a)(4) (China). Neither SB 264 nor Florida statutes provide a general definition of "domicile." Black's Law Dictionary defines "domicile" as person's "fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere." *Domicile*, Black's Law Dictionary (11th ed. 2019). As Plaintiffs allege, individuals lawfully present in the United States on a nonimmigrant visa from a "country of concern" are likely to be considered domiciled in that country, because nonimmigrant visas are not a mechanism to establish permanent residency in the United States. *See* First Am. Compl. ¶ 61. Nonimmigrant visas may include visas for "tourism, medical treatment, business, temporary work, study, or other similar reasons." U.S. Customs & Border Protection,

Florida is drawing distinctions based on a person's nationality: nonimmigrant visa holders from countries that Florida does not deem to be "countries of concern" will not be subject to any of SB 264's restrictions on purchasing or owning real property. As an illustration, an individual from China with a valid H-1B visa, like Plaintiff Yifan Shen, will be subject to SB 264's prohibitions on owning real property in Florida and the associated civil and criminal penalties for violations of the statute. *See* Decl. of Yifan Shen, ECF No. 21-2 ("Shen Decl."), ¶¶ 7, 12, 18–20. An individual from China with a valid F-1 student visa, like Plaintiff Xinxi Wang, will be required to register the home that she currently owns with the State. *See* Decl. of Xinxi Wang, ECF No. 21-4 ("Wang Decl."), ¶¶ 15–16. By contrast, an individual from Japan with an identical immigration status as Ms. Shen or Ms. Wang would be able to purchase and own property in Florida free of these restrictions or prohibitions.[9]

Requirements for Immigrant and Nonimmigrant Visas, https://www.cbp.gov/travel/international-visitors/visa-waiver-program/requirements-immigrant-and-nonimmigrant-visas (Jan. 3, 2018).

[9] SB 264 does not present a case of discrimination solely on the basis of citizenship status, which calls for a more nuanced analysis as to whether there may be a violation of the FHA. *See, e.g.*, *Reyes v. Waples Mobile Home Park Ltd. P'ship*, 903 F.3d 415, 432 (4th Cir. 2018) (the FHA prohibits discrimination on the basis of citizenship "when it has the purpose or unjustified effect of discriminating on the basis of national origin" (citation omitted)). Here, SB 264 does not affect all non-citizens, but rather singles out non-citizens from a small list of countries for less favorable treatment with regard to property-related transactions. In targeting individuals from a discrete list of countries, SB 264 discriminates on the basis of national origin.

The provisions of SB 264 that restrict land ownership by individuals domiciled in certain foreign nations violate sections 3604 and 3605 of the FHA. First, they violate Section 3604(a), which makes it unlawful to "refuse to sell . . . or otherwise make unavailable" a dwelling to any person based on national origin. SB 264's provisions prevent individuals from purchasing certain parcels of real property based only on their national origin, and they reduce the availability of housing for individuals from "foreign countries of concern." *See Jackson v. Okaloosa Cnty.*, 21 F.3d 1531, 1542 n.17 (11th Cir. 1994) ("Courts have construed the phrase 'otherwise make unavailable or deny' in [42 U.S.C. § 3604(a)] to encompass actions by . . . government units that affected the availability of housing to minorities."). If SB 264 goes into effect, Plaintiffs Yifan Shen and Zhiming Xu will be prohibited from purchasing homes they have already signed contracts to acquire, solely based on their status as Chinese nationals. *See* Shen Decl. ¶¶ 18, 20; Decl. of Zhiming Xu, ECF No. 21-3 ("Xu Decl."), ¶ 18. Ms. Shen, who is Chinese and holds a valid H-1B visa, is prohibited by the Chinese-specific portions of SB 264 from purchasing her desired property because it appears to be within five miles of military sites. Shen Decl. ¶¶ 7, 18; *see* Fla. Stat. 692.204(2)(a). In addition, asylum seekers in Florida may be subject to SB 264's prohibitions, even though these non-U.S. citizens have expressed a clear intent not to return to their home country by requesting asylum in the United States. *See Juarrero v. McNayr*, 157

So. 2d 79, 80 (Fla. 1963). Mr. Xu, who is Chinese and has applied for political asylum, arguably is prohibited by SB 264 from purchasing his desired property because he already owns property in Florida. Xu Decl. ¶¶ 7, 18; *see* Fla. Stat. 692.204(3).

In addition to preventing individuals from "foreign countries of concern" from buying specific homes, SB 264's restrictions will serve to generally reduce the availability of housing by making large parts of Florida—which happen to be near military installations and critical infrastructure facilities—essentially off-limits to individuals based on their nationality. *See* First Am. Compl. ¶ 76.

For similar reasons, SB 264 violates Section 3605(a) of the FHA, which prohibits discrimination in real-estate-related transactions, including the selling of residential real property. If SB 264 goes into effect, it would prohibit sellers of real property, including Plaintiff Multi-Choice Realty, LLC, from selling specific parcels of real property—*e.g.*, parcels over two acres in size, or parcels near military installations or critical infrastructure facilities—to individuals based on national origin.[10] *See* Decl. of Jian Song, ECF No. 21-6 ("Song Decl."), ¶¶ 11, 13–14.

[10] SB 264 is also likely to cause violations of Sections 3604(b), (c), and (d) of the FHA once the law goes into effect. These sections prohibit discrimination in the "terms, conditions, or privileges" of the sale of a dwelling, 42 U.S.C. § 3604(b); the publication of any notice or advertisement indicating a preference based on national origin, *see id.* § 3604(c); and false representations about the availability of a dwelling based on national origin,

The Eleventh Circuit has not weighed in on what test should be used to determine when facially discriminatory policies may be justified under the FHA. *See Sailboat Bend Sober Living, LLC v. City of Fort Lauderdale*, 46 F.4th 1268, 1277 (11th Cir. 2022) (discussing three tests adopted by other circuits).[11] But regardless of the test applied, Defendants would fail to meet their burden to show that SB 264's facial discrimination is valid. Each of the tests adopted by other circuits—"the Equal Protection Clause rational basis review test," "a means-ends tailoring test," or examining whether the restriction "responds to legitimate safety concerns," *id.* (citation and internal quotation marks omitted)—would require Defendants to put forth a legitimate interest to justify SB 264's land ownership restrictions and prohibitions on people from China and other "countries of concern." Defendants cannot do so.

see id. § 3604(d). Because SB 264 establishes restrictions on acquiring real property based on national origin, sellers and providers of housing—including lay persons not trained in the complexities of immigration law—may discriminate against buyers based on national origin in their attempts to comply with the law. In fact, SB 264 may also lead sellers and housing providers to engage in profiling and other discriminatory practices in their attempts to determine whether potential buyers are encompassed by the law's restrictions.

[11] In *Sailboat Bend*, the Court did not choose among the tests utilized by other circuits to assess whether a defendant is justified in enacting a facially discriminatory policy because, in affirming the district court, the Court concluded that the challenged ordinance treated the plaintiffs—individuals with disabilities—"better than it treats those without disabilities." 46 F.4th at 1277. Here, there is no question that by singling out people from particular countries for exclusion from property rights that all others enjoy, Florida is treating Plaintiffs far worse than others.

Florida has yet to identify any legitimate connection between protecting the State and prohibiting individuals who simply come from "foreign countries of concern" from purchasing or owning real property. *See also* Pls.' Mot. at 21 n.7 (noting that "[i]n 2022, Chinese buyers were involved in 0.1 percent of all residential real estate purchases in Florida"). In a press release on May 8, 2023, accompanying the passage of SB 264, Florida's Governor described it as a bill to "counteract the malign influence of the Chinese Communist Party in the state of Florida." *See* Decl. of Keliang Zhu Ex. 21, ECF No. 21-28 ("Governor's May 8, 2023 Press Release"). Similarly, Florida's Commissioner of Agriculture stated: "Restricting China and other hostile foreign nations from controlling Florida's agricultural land and lands near critical infrastructure facilities protects our state, provides long-term stability, and preserves our economic freedom." *Id.* But even assuming these are legitimate interests, *see* Part II.A, *infra*, neither statement explains how prohibiting Plaintiffs and other similarly situated individuals from purchasing or owning real estate in Florida achieves these aims. None of the Plaintiffs are members of the Chinese government or the Chinese Communist Party, or otherwise representatives of their country of origin. *See* Shen Decl. ¶ 4; Xu Decl. ¶ 4; Wang Decl. ¶ 4; Decl. of Yongxin Liu, ECF No. 21-5 ("Liu Decl"),

¶ 4. Consequently, SB 264 is a facially discriminatory policy that violates Sections 3604(a) and 3605(a) the FHA.[12]

B. SB 264 is invalid under Section 3615 of the FHA.

Under Section 3615 of the FHA, "any law of a State . . . that purports to require or permit any action that would be a discriminatory housing practice . . . shall to that extent be invalid." 42 U.S.C. § 3615. Thus, "the language of the [FHA] itself manifests a clear congressional intent to vitiate the application of any state law that would permit discrimination[.]" *Astralis Condo. Ass'n v. Sec'y, U.S. Dep't of Hous. & Urban Dev.*, 620 F.3d 62, 70 (1st Cir. 2010); *see Warren v. Delvista Towers Condo. Ass'n, Inc.*, 49 F. Supp. 3d 1082, 1089 (S.D. Fla. 2014) (striking down county ordinance which, if enforced, would "stand[] as an obstacle to the objectives of Congress in enacting the FHA" (citation and internal quotation marks omitted)). By its express terms, SB 264 requires discriminatory housing practices that violate Section 3604 and Section 3605 of the FHA. *See* Part I.A,

[12] The application of SB 264 may also lead to discrimination against Asian and Asian-American buyers based on their race, regardless of whether their national origin is Chinese. Thus, SB 264 will "make[] housing options significantly more restrictive for members of a protected group than for persons outside that group." *See Schaw v. Habitat for Human. of Citrus Cnty., Inc.*, 938 F.3d 1259, 1274 (11th Cir. 2019) (internal citation omitted); *see also Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 524 (2015); *Jackson*, 21 F.3d at 1543 (plaintiffs stated FHA claim based on race where challenged policy affected availability of housing for Black residents by excluding public housing from predominantly white census tracts); *Reyes*, 903 F.3d at 428 (plaintiffs stated FHA claim based on national origin where mobile home park required residents to provide documentation of legal status to renew lease).

supra. Additionally, the law will also require companies, such as Plaintiff Multi-Choice Realty, LLC, to violate the FHA because these companies will be required to refuse to conduct business with persons based on their national origin. *See* Song Decl. ¶¶ 11, 13–14. Consequently, SB 264 is invalid under Section 3615 of the FHA.

II. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR EQUAL PROTECTION CLAIM

The Equal Protection Clause of the Fourteenth Amendment mandates that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. A regulatory classification that "classifies by race, alienage, or national origin" is presumed invalid under the Equal Protection Clause. *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440 (1985). State laws employing such classifications, like SB 264, "are subjected to strict scrutiny and will be sustained only if they are suitably tailored to serve a compelling state interest."[13] *Id.* SB 264 violates the Equal Protection Clause because it discriminates on the basis of alienage and national origin and is not narrowly tailored such that it survives strict scrutiny.

[13] State laws employing classifications based on alienage are subject to strict scrutiny, but "federal laws drawing distinctions between U.S. citizens and aliens—particularly in the context of war and national security—are generally permissible so long as they are rationally related to a legitimate governmental interest." *Al Bahlul v. United States*, 767 F.3d 1, 75 (D.C. Cir. 2014) (en banc) (Kavanaugh, J., concurring in part) (citing cases).

A. SB 264 discriminates on the basis of alienage and national origin.

A regulatory classification based on nationality amounts to both an "alienage" classification and a "national origin" classification. A law classifies persons based on "alienage" if it either draws distinctions between U.S. citizens and non-U.S. citizens or draws distinctions among different classes of non-U.S. citizens. *See, e.g.*, *Nyquist v. Mauclet*, 432 U.S. 1, 8–9 (1977) (holding that a statute employed an alienage classification because it distinguished among non-U.S. citizens based on whether they had applied for citizenship or stated an intent to apply for citizenship); *Graham v. Richardson*, 403 U.S. 365, 370–76 (1971) (analyzing a residency requirement for welfare benefits as an alienage classification even though non-U.S. citizens who met the residency requirement would qualify for benefits); *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 419–20 (1948) (describing a statute that applied differently to non-U.S. citizens eligible for citizenship and non-U.S. citizens ineligible for citizenship as employing an alienage classification). A law classifies persons based on "national origin" if it draws distinctions based on characteristics related to background or ancestry, including nationality. *See e.g.*, *Kras*, 409 U.S. at 446 (using "nationality" synonymously with national origin); *Graham*, 403 U.S. at 372 (same); *Jean v. Nelson*, 472 U.S. 846, 856 (1985) (discussing "national origin" in connection with "nationality-based criteria").

The Equal Protection Clause imposes different restraints on the Federal Government than it does on States with respect to classifications based on nationality. The Supreme Court has explained that the federal government may, in certain circumstances, draw classifications based on alienage or nationality for purposes related to foreign policy or immigration policy. State governments, however, are not free to draw such classifications on their own. As the Supreme Court observed in *Plyler v. Doe*, 457 U.S. 202 (1982):

> With respect to the actions of the Federal Government, alienage classifications may be intimately related to the conduct of foreign policy, to the federal prerogative to control access to the United States, and to the plenary federal power to determine who has sufficiently manifested his allegiance to become a citizen of the Nation. No State may independently exercise a like power. But if the Federal Government has by uniform rule prescribed what it believes to be appropriate standards for the treatment of an alien subclass, the States may, of course, follow the federal direction.

Id. at 219 n.19 (citing *De Canas v. Bica*, 424 U.S. 351 (1976)).

The United States classifies individuals by nationality for various purposes, such as in the refugee context, where the United States identifies refugees of "special humanitarian concern" and subjects refugees of certain nationalities to additional or different security screening protocols. *See* Refugee Act of 1980, Pub. L. No. 96-212, § 101(b), 94 Stat. 102 (1980) (codified at 8 U.S.C. § 1521 note). But there is no federal policy that would justify the type of broad discrimination imposed on persons subject to SB 264, which goes so far as to

impose severe prohibitions on real property ownership on individuals such as lawfully present students and employees, without any evidence that such persons were operating on behalf of or even formally connected to the governments of any purported foreign countries of concern. In fact, federal policy is just the opposite—it mandates equal access to housing, regardless of national origin. *See* 42 U.S.C. § 3601 ("It is the policy of the United States to provide . . . for fair housing throughout the United States."). Thus, State policies such as SB 264 that discriminate on the basis of national origin or alienage with regard to real property transactions cannot be viewed as consistent with any "federal direction." *Cf. Plyler*, 457 U.S. at 225–26 (holding that a State policy denying public education to undocumented students could not be justified based on federal disapproval of undocumented students because the State policy did not "correspond[] to any identifiable congressional policy" and did not "operate harmoniously within the federal program").

Accordingly, SB 264's restrictions and prohibitions on land ownership are subject to strict scrutiny under the Fourteenth Amendment and are unlawful under the Equal Protection Clause unless the State could show they were narrowly tailored to serve a compelling government interest. *See, e.g.*, *Johnson v. California*, 543 U.S. 499, 505–506 (2005).

B. SB 264 cannot survive strict scrutiny because it is not narrowly tailored to serve any compelling government interest.

"Under strict scrutiny the means chosen to accomplish the State's asserted purpose must be specifically and narrowly framed to accomplish that purpose." *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 280 (1986) (plurality opinion). SB 264 bears little specific connection to public safety and as such does not serve any compelling government interest. Even were the Court to accept the State's assertion that this law somehow protects public safety by counteracting the Chinese Communist Party's influence, *see* Governor's May 8, 2023 Press Release, Florida has not shown that its decision to severely restrict the ability of individuals from China and other specified countries to purchase real property, or its requirements that these individuals register their properties with the state, are narrowly tailored ways to address that concern. *See, e.g.*, *Hassan v. City of New York*, 804 F.3d 277, 306 (3d Cir. 2015) ("No matter how tempting it might be to do otherwise, we must apply the same rigorous standards even where national security is at stake."). The law is clear that the classification at issue must "fit with great[] precision" the compelling interest it seeks to uphold. *Wygant*, 476 U.S. at 280 n.6 (citation and internal quotation marks omitted). Florida cannot show that restricting or prohibiting individuals, particularly those who may have no connection whatsoever with the Chinese government or the Chinese Communist Party, from purchasing real estate contributes to public safety.

CONCLUSION

For the foregoing reasons, the provisions of SB 264 that restrict and prohibit land ownership violate the Fair Housing Act and the Equal Protection Clause of the Fourteenth Amendment, and Plaintiffs are likely to succeed on the merits of those claims.

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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2023, I electronically filed the foregoing with the Clerk of Court using the ECF system, which sent notification of such filing to all counsel of record.

/s/ Alisha Jarwala
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