

ENFORCEMENT ACTION AGAINST MITAY,  
INC. WITH RESPECT TO 2512 THORNE  
(HTC 70046 / CMTS 2344)

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BEFORE THE  
TEXAS DEPARTMENT OF  
HOUSING AND COMMUNITY  
AFFAIRS

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 10<sup>th</sup> day of October, 2019, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **MITAY, INC.**, a Texas corporation (Respondent).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (APA), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

**WAIVER**

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov't Code §2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov't Code §2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

**FINDINGS OF FACT (FOF)**

**Jurisdiction:**

1. During 1990, Walter C. Spear was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$1,160 to acquire and rehabilitate one unit known as 2512 Thorne (HTC file No. 70046 / CMTS No. 2344 / LDLD No. 352).

2. Walter C. Spear signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective November 15, 1990, and filed of record at Volume 2134, Page 842 of the Official Public Records of Real Property of Potter County, Texas (“Records”). In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the LURA.
3. Walter C. Spear transferred his interests in the Property to Respondent through a Warranty Deed with Vendor’s Lien effective December 15, 1994, and filed in the Records at Volume 2134, Page 843. The restrictions remained in place in accordance with Section 2 of the LURA, thereby binding Respondent to the terms of the agreement.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations:

5. Property has a history of violations and Respondent previously signed Agreed Final Orders in 2013 and 2015, both of which were violated.
6. On May 19, 2017, TDHCA sent notice that Respondent had failed to timely submit their 2016 Annual Owner’s Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report. The report remains delinquent.
7. On May 10, 2018, TDHCA sent notice that Respondent had failed to timely submit their 2017 Annual Owner’s Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report. The report remains delinquent.
8. A Uniform Physical Condition Standards (UPCS) inspection was conducted on 12/11/2018. Inspection reports showed numerous serious property condition violations, a violation of 10 TAC § 10.621 (Property Condition Standards). Notifications of noncompliance were sent and a January 14, 2019, corrective action deadline was set. No response was submitted to compliance and the violations listed at Exhibit 1 remain unresolved.
9. On May 2, 2019, TDHCA sent notice that Respondent had failed to timely submit their 2018 Annual Owner’s Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report. The report remains delinquent.
10. All violations listed above are considered unresolved at the time of this Order.

## CONCLUSIONS OF LAW

10. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC §2.
11. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
12. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
13. Respondent violated 10 TAC §10.621 in 2018, by failing to comply with HUD's Uniform Physical Condition Standards when violations were discovered and not timely corrected.<sup>2</sup>
14. Respondent violated 10 TAC §10.607 in 2017, 2018, and 2019 by failing to submit Annual Owner's Compliance Reports for the years 2016 through 2018;
15. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
16. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
17. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
18. An administrative penalty of \$4,000 is an appropriate penalty in accordance with 10 TAC Chapter 2.

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<sup>2</sup> HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TAC 10.621(a)

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Governing Board of the Texas Department of Housing and Community Affairs orders the following:

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$4,000, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a 75% portion (\$3,000) of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before December 9, 2019.

**IT IS FURTHER ORDERED** that Respondent shall repair all UPCS violations as indicated at Exhibit 1 and submit work orders in the correct format, and including all necessary parts, to document the corrections to TDHCA on or before December 9, 2019.

**IT IS FURTHER ORDERED** that Respondent shall submit annual reports as indicated at Exhibit 2 on or before December 9, 2019.

**IT IS FURTHER ORDERED** that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the remaining assessed administrative penalty and the remaining 25% portion (\$1,000) of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the full administrative penalty shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

**IT IS FURTHER ORDERED** that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System (CMTS) by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to inform her that the documentation is ready for review. If it comes due and payable, the penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 <sup>th</sup> St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

**IT IS FURTHER ORDERED** that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 3, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

**IT IS FURTHER ORDERED** that the terms of this Agreed Final Order shall be published on the TDHCA website.

*[Remainder of page intentionally blank]*

Approved by the Governing Board of TDHCA on October 10, 2019.

By: /s/ J.B. Goodwin  
Name: J.B. Goodwin  
Title: Chair of the Board of TDHCA

By: /s/ James "Beau" Eccles  
Name: James "Beau" Eccles  
Title: Secretary of the Board of TDHCA

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 10th day of October, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ Kathleen M. Vale  
Notary Public, State of Texas

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 10th day of October, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ Kathleen M. Vale  
Notary Public, State of Texas

STATE OF TEXAS §  
§  
COUNTY OF Potter §

BEFORE ME, Kourtni F. Immel (notary name), a notary public in and for the State of Texas, on this day personally appeared Edgar A. Miles (person signing document), known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is Edgar A. Miles, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of Owner for Respondent. I am the authorized representative of Respondent, owner of **2512 Thorne**, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

**MITAY, INC.**, a Texas corporation

By: /s/ Edgar A. Miles

Name: Edgar A. Miles

Title: Owner

Given under my hand and seal of office this 13th day of November, 2019.

/s/ Kourtni F. Immel  
Signature of Notary Public

Kourtni F. Immel  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF Texas

My Commission Expires: 10-02-2023

## Exhibit 1

### UPCS Instructions

1. UPCS violation that must be corrected:

***[OMITTED FROM WEB VERSION – NOT AVAILABLE IN AN ACCESSIBLE FORMAT]***

2. Prepare corrective documentation following these guidelines:  
<http://www.tdhca.state.tx.us/pmcomp/inspections/docs/UPCS-WorkOrderGuidelines.pdf>
3. Submit corrective documentation via CMTS upload following the instructions at <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>, then email Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to let her know that the submission is ready for review.



## Exhibit 2

### **Annual Owner's Compliance Report Instructions**

Submit the 2016, 2017, and 2018 Annual Owner's Compliance Reports (AOCRs) online via CMTS.

CMTS is available at: <https://pox.tdhca.state.tx.us/aims2/pox>.

Each report has three parts, each of which must be submitted via CMTS:

- Part A: Owner's Certification of Program Compliance
- Part B: Unit Status Report
- Owner's Financial Certification

The 2016 AOCR was due 4/30/2017, reporting data as of 12/31/2016. Part A and the Owner's Financial Certification must be completed with information as of 12/31/2016; however, the Unit Status Report can be completed using current occupancy data.

The 2017 AOCR was due 4/30/2018, reporting data as of 12/31/2017. Part A and the Owner's Financial Certification must be completed with information as of 12/31/2017; however, the Unit Status Report can be completed using current occupancy data.

The 2018 AOCR was due 4/30/2019, reporting data as of 12/31/2018. Part A and the Owner's Financial Certification must be completed with information as of 12/31/2018; however, the Unit Status Report can be completed using current occupancy data.

#### *Technical support:*

- *Training materials regarding annual reporting is available at the following link: <https://www.tdhca.state.tx.us/pmcomp/reports.htm>.*
- *Please note that you must enter current occupancy data and individual household member information for each unit before the system will allow you to submit Part B. To update the Unit Status Report / Quarterly Vacancy Report, you will log in to CMTS. Once logged in, click on "Unit Status Report". Click on "Enter Unit Occupancy" at the top of the next screen. From there, you will be able to enter occupancy information for each unit, along with household member data. Once all units have been updated, submit that data via CMTS as the 2016, 2017, and 2018 AOCR Part B. To get to those reports, go back to the "Unit Status Reports" page in CMTS and submit the Unit Status Report for the required period.*



debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period/Federal Affordability Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of 8609's, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved.

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) A written explanation outlining the reason for the request;

(2) Ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(A) of Subchapter C;

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(13)(B) of Subchapter C;

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of Subchapter C (relating to Ineligible Applicants and Applications).

(j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties or fees imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer.

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this chapter (relating to Fee Schedule, Appeals, and other Provisions).

Source Note: The provisions of this §10.406 adopted to be effective January 5, 2017, 41 TexReg 10569; amended to be effective January 4, 2018, 42 TexReg 7610; amended to be effective December 30, 2018, 43 TexReg 8297