

**CITY OF BINGHAMTON WATER STREET DEVELOPMENT CORPORATION**

A NOT-FOR-PROFIT CORPORATION

BY LAWS

Adopted March 7, 2022

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BY-LAWS OF CITY OF BINGHAMTON WATER STREET DEVELOPMENT CORPORATION

ARTICLE I

THE CORPORATION

Section 1. Name. The name of this Corporation is the City of Binghamton Water Street Development Corporation and it shall be referred to in these by-laws as “the Corporation.”

Section 2. Purpose.

a) The chief purpose of the Corporation is the design, development, construction, reconstruction and financing of a City-owned parking facility located on Water Street in the City, for the purpose of providing necessary and desirable parking in the City, and lessening the burdens of government and acting in the public interest.

b) The objects and purposes of this Corporation are those objects and purposes stated in its Certificate of Incorporation.

ARTICLE II

OFFICE AND BOOKS

Section 1. Place of Business. The Corporation shall maintain a reasonably accessible place of business and shall be open to the public during normal business hours.

Section 2. Principal Office. The principal office of the Corporation shall be located at City Hall, in the City of Binghamton, County of Broome and State of New York.

Section 3. Records. There shall be kept at the principal office of the Corporation correct records of account of the activities and transactions of the Corporation, including a minute book, which will contain a copy of the Certificate of Incorporation, a copy of these by-laws, and all minutes of meetings of the Corporation’s Board of Directors.

ARTICLE III

MEMBER

Section 1. Class of Members. The Corporation shall have one class of members. The sole member of the Corporation shall be the City of Binghamton, New York (the “City”). Actions on behalf of the City as the sole member shall be taken by the Mayor, as designee of the City. The Corporation shall be managed by a Board of Directors, as provided herein.

## ARTICLE IV

### BOARD OF DIRECTORS

Section 1. Powers and Duties. The Board of Directors shall have general power to control and manage the affairs and property of the Corporation and shall have full power, by majority vote, to adopt rules and regulations governing the action of the Board of Directors and shall have full and complete authority with respect to the payment and distribution of the monies received by the Corporation, provided that the primary purposes of the Corporation, as expressed in the Certificate of Incorporation shall not be amended or changed.

Section 2. Number of Directors and Term of Office.

a) The Board of Directors shall consist of five directors, four of whom shall be appointed by the Mayor and one of whom shall be appointed by the Council. Directors shall have terms of three years, provided, however, that the initial term of one initial director shall be designated to expire on December 31, 2022, the initial terms of two directors shall be designated to expire on December 31, 2023 and the initial terms of two directors shall be designated to expire on December 31, 2024. The initial directors, and the expiration dates of their initial terms, are as stated in the Certificate of Incorporation. The initial term of the director appointed by the Council shall expire on December 31, 2024. Members of the Council and other City officers or personnel are eligible to serve as members of the Board of Directors the Corporation.

b) Notwithstanding durations of the terms of directors set forth above, a director's term shall be extended until the earlier to occur of such director's (i) re-appointment to the Board of Directors, (ii) appointment of a replacement member to the Board of Directors, or (iii) resignation as a member of the Board of Directors.

c) Each director shall have one vote.

Section 3. Organization. At each meeting of the Board of Directors, the President, or, in the absence of the President, the Vice President, shall preside, or in the absence of either of such officers, a chairman chosen by a majority of the directors present shall preside. The Secretary or an Assistant Secretary shall act as secretary of the Board of Directors. In the event the Secretary and each Assistant Secretary shall be absent from any meeting of the Board of Directors, the meeting shall select its secretary.

Section 4. Resignations and Removal of Directors. Any director of the Corporation may resign at any time. Any director of the Corporation who was appointed by the Council may be removed, with or without cause, by action of the Council, pursuant to an ordinance duly adopted by the Council, a copy of which shall be filed with the Secretary of the Corporation. Any director of the Corporation who was appointed by the Mayor may be removed, with or without cause, by a written direction of the Mayor, a copy of which shall be filed with the Secretary of the Corporation.

Section 5. Vacancies. Vacancies occurring for any reason with respect to any director of the Corporation who was appointed by the Council shall be filled by action of the

Council, pursuant to an ordinance duly adopted by the Council, a copy of which shall be filed with the Secretary of the Corporation. Vacancies occurring for any reason with respect to any director of the Corporation who was appointed by the Mayor shall be filled by a written direction of the Mayor, a copy of which shall be filed with the Secretary of the Corporation.

Section 6. Action by the Board of Directors.

a) Except as otherwise provided by law, the Certificate of Incorporation or these By-laws, an act of the Board of Directors means action at a meeting of the Board of Directors by vote of a majority of the directors present at the time of the vote, if a quorum is present at such time.

b) To the extent permitted by law, any action required or permitted to be taken by the Board of Directors may be taken without a meeting if all members of the Board of Directors consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board of Directors shall be filed with the minutes of the proceedings of the Board of Directors.

c) To the extent permitted by law, any one or more members of the Board of Directors may participate in a meeting of the Board of Directors by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

ARTICLE V

MEETINGS

Section 1. Annual Meeting. The Annual Meeting of the Board of Directors shall be held for the transaction of business each year on such day as determined by the Board of Directors. All meetings of the Board of Directors shall be held at the principal office of the Corporation or any such other time or place as the Board of Directors shall designate. At such meeting, officers of the Corporation shall be elected and the Board of Directors shall transact other such business as is within the power of the Board of Directors.

Section 2. Annual Report. The Board of Directors shall present at the Annual Meeting an Annual Report, verified by the President and Treasurer or by the majority of directors, showing the whole amount of real and personal property owned by the Corporation, where located, where and how invested, the amount and nature of the property acquired during the year immediately preceding such date and the manner of the acquisition, the amount applied, appropriated or expended during the year immediately preceding such date and the manner of the appropriation, and the purposes, objects or persons to or for which such applications, appropriations or expenditures have been made, and the names of the persons who have been admitted as directors of the Corporation during such year. Said Annual Report shall be filed with the records of the Corporation and an abstract thereof entered in the minutes of the proceeding Annual Meeting. A copy of said Annual Report shall be filed in the office of the City Clerk of Binghamton prior to the Annual Meeting. Said Annual Report shall be a public document.

Section 3. Notice of Annual Meeting. Notice of the time and place of such Annual Meeting shall be given by mailing a copy thereof or delivering the same to each director not less than ten nor more than twenty days before such meeting, or pursuant to waiver of notice signed before or after such meeting by all directors. If for any reason the Annual Meeting is not so held, it shall be held at such time and place as may be designated in a notice of said Annual Meeting which shall be given hereinafter as provided for special meetings of the Board of Directors or by a waiver of notice signed before or after such meeting by all of the directors.

Specific notice shall be given when the business or the proposals to be acted upon at such meeting includes one or more of the following:

- a) A proposal to amend the Certificate of Incorporation.
- b) A proposal to merge or consolidate with another corporation, domestic or foreign.
- c) A proposal to lease, sell, convey, transfer, exchange or otherwise dispose of all or substantially all of the assets of the Corporation.
- d) A proposal to dissolve the Corporation.

Section 4. Regular Meetings Notice. Regular meetings of the Board of Directors shall be held at such time and place as the Board may determine and notice of such meeting need not be given.

Section 5. Special Meetings Notice. Special meetings of directors may be held at the principal office of the Corporation or at such other place as may be designated in the notice of such meeting, upon the call of the President or any two (2) of the directors. Notice of the time, place and purpose of any special meeting of the Board of Directors shall be given by the mailing a copy thereof or by delivering the same to each director at least seventy-two (72) hours before such meeting or pursuant to waiver of notice signed before or after such meeting by the directors.

Section 6. Quorum, Majority Vote. At all meetings of the Corporation, including annual meetings, regular meetings and special meetings, a majority of the directors shall constitute a quorum for the transaction of business. Any one or more directors may participate in a meeting of such Board by means of a conference telephone or similar equipment that allows all persons participating in the meeting to hear each other simultaneously. Participation by such means shall constitute presence in person at such a meeting. A majority vote shall be defined as a majority of the quorum. Such a definition of the majority vote shall be applicable to the annual meetings, regular meetings and special meetings.

Section 7. Adjournment of Meetings. In the absence of a quorum, a majority of the directors present may adjourn the meeting for a period of not greater than twenty (20) days until a quorum is obtained. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. At all meetings of directors at which a quorum is present, except as provided herein, all matters shall be decided by the vote of half of the total Directorship plus one, in person or by proxy.



Section 8. Organization. The President of the Corporation shall preside at all meetings, or, in the absence of the President, the Vice President shall preside. The Secretary of the Corporation shall act as Secretary at all meetings of the directors. In the absence of the Secretary, the presiding officer may appoint any person to act as Secretary of the meeting.

Section 9. Committees. Any committee which shall be authorized by the Board and which is delegated any of the management function of the Corporation must conform with the same requirements as does the Board.

Section 10. Compensation. No director of the Corporation shall receive, directly or indirectly, any salary or compensation for his services as director or any other capacity with the Corporation, except they may be reimbursed for the expenses reasonably incurred by them in the performance of their duties.

## ARTICLE VI

### OFFICERS

Section 1. Number and Qualifications. The Officers of the Corporation shall be a President, a Vice President, a Secretary, a Treasurer and such other officers, if any, including one or more Vice Presidents, as the Board of Directors may appoint. One person may hold more than one office in the Corporation, except that one person may not hold both the offices of President and Secretary. No instrument required to be signed by more than one officer shall be signed by one person in more than one capacity.

Section 2. Elections, Term of Office and Removal. Officers of the Corporation shall be elected annually at the Annual Meeting of the Board of Directors and each shall continue in office until death, resignation or removal. Any officer of the Corporation may be removed, with or without cause, by the vote of a majority of the entire Board of Directors.

Section 3. Other Agents. The Board of Directors may from time to time appoint such agents as it shall deem necessary, each of whom shall hold office at the pleasure of the Board of Directors. Such agents shall have such authority as the Board of Directors shall determine.

Section 4. Vacancies. In the case of any vacancy in any office, a successor to fill the unexpired portion of the term may be elected by the Board of Directors at a regular or special meeting called for that purpose.

Section 5. President: Powers and Duties. The President shall be a member of the Board of Directors and the Chief Executive Officer of the Corporation. The President shall preside at all meetings of the Board of Directors. The President shall generally manage and supervise the affairs of the Corporation. The President shall keep the Board of Directors fully informed and shall freely consult with them concerning the activities of the Corporation. He or she shall have the power to sign alone, unless the Board of Directors shall specifically require an additional signature in the name of the Corporation, all contracts authorized either generally or specifically by the Board of Directors. He or she shall perform all duties incident to the office of

President subject, however, to the control of the Board of Directors, and such other duties as shall from time to time be assigned to him or her by the Board of Directors.

Section 6. Vice President: Powers and Duties. The Vice President shall be a member of the Board of Directors and shall have such powers and duties as may be assigned to him or her by the Board of Directors. In the absence of the President, the Vice President shall in general have the powers and perform the duties of the President.

Section 7. Secretary: Powers and Duties. The Secretary shall be a member of the Board of Directors and shall act as secretary of all meetings of the Board of Directors and shall keep or cause to be kept the minutes of all such meetings in the books proper for that purpose. He or she shall attend to the giving and serving of all notices of the Corporation. He or she shall perform all duties incident to the office of the Secretary subject, however, to the control of the Board of Directors, and such other duties as shall from time to time be assigned to him or her by the Board of Directors.

Section 8. Treasurer: Powers and Duties. The Treasurer shall be a member of the Board of Directors and shall have custody of all funds and securities of the Corporation that may come into his or her hands. He or she shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Corporation, and shall deposit all monies and other valuable effects of the Corporation in the name and to the credit of the Corporation in such banks or depositories as the Board of Directors may designate. Whenever required by the Board of Directors, the Treasurer shall render a statement of the accounts. He or she shall exhibit the books and accounts upon request to any Officer or director of the Corporation. He or she shall perform all duties incident to the office of Treasurer subject, however, to the control of the Board of Directors. He or she shall perform other duties as shall be assigned to him or her from time to time by the Board of Directors. The Treasurer shall give such security for the faithful performance of his or her duties as the Board of Directors may require.

Section 9. Executive Director and/or Employees. The Board of Directors may employ an Executive Director or other employees who are subject to the supervision of the President and the Board of Directors. Such employees shall be either full or part-time employees and shall carry out the purposes of the Corporation. Such employees shall receive such compensation as may be determined by the Board of Directors in accordance with law.

## ARTICLE VII

### CONTRACTS, CHECKS, BANK ACCOUNTS, INVESTMENTS, PROCUREMENT AND PROHIBITIONS

Section 1. Contracts. No director of the Corporation shall contract or incur any debt or obligation on behalf of the Corporation or in any way render it liable unless duly authorized by the Board of Directors.

Section 2. Checks, Notes, and Contracts etc. The Board of Directors is authorized to select such banks or depositories as it shall deem proper for the funds of the Corporation. The Board of Directors may empower the staff of the Corporation to make deposits

in any of its duly authorized bank accounts or depositories without countersignature by any Officer of the Corporation. Otherwise, such deposits will be made by the Treasurer of the Corporation in any of the Corporations duly authorized bank accounts or depositories without countersignature by any Officer of the Corporation. The Board of Directors shall determine, who, if anyone, in addition to the President, shall be authorized on the Corporation's behalf to sign checks, drafts or other orders for payment of money, acceptances, notes or other evidences of indebtedness, enter into contracts, or execute and deliver other documents and instruments.

Section 3. Investments. The funds of the Corporation may be retained in whole or in part in cash or be invested and reinvested from time to time in such property, real, personal or otherwise, or stocks, bonds or other securities, as the Board of Directors in its discretion may deem desirable, in accordance with the provisions of the City of Binghamton Code of Ordinances for policy Investment (Chapter 5, 5-7); Article V of the Not-for-Profit Corporation Law and other applicable laws, rules or regulations.

Section 4. Procurement. The Board of Directors will adopt a procurement policy as may be permitted for local development corporations in the State of New York.

Section 5. Prohibitions. The Corporation is prohibited from extending credit to directors and employees. No director or employee of the Corporation, or its designees or agents, shall have any interest, direct or indirect, in a contract or sub-contract, or the proceeds thereof, for work to be performed in connection with any project or function of the Corporation.

## ARTICLE VIII

### CORPORATION SEAL

The Seal of the Corporation shall be circular in form and shall bear the name of the Corporation.

## ARTICLE IX

### LIABILITY AND INDEMNIFICATION

Section 1. Personal Liability. No director of the Corporation shall be personally liable to any person or party dealing with the Corporation for any amount arising out of any claim, charge, service, obligation or otherwise against the Corporation; and any such person or claimant shall be paid and reimbursed solely out of the funds of the Corporation. No director of the Corporation shall be liable for any of his or her acts, actions or omissions either to the Corporation or to anyone else in the absence of bad faith or fraud. Such director shall be entitled to reimbursement for any and all expenses incurred by him or her in defense of any action as provided by the laws of the State of New York. A blanket fiduciary bond covering the financial acts of all officers and directors and those entrusted with the handling of funds or property of the corporation shall be provided for by the Board of Directors.

Section 2. Employee and Board Member Protection Policy. If any employee or director reasonably believes that any policy, practice, or activity of the Corporation is in

violation of law, a written complaint must be filed by that employee or director with the Corporation Counsel of the City of Binghamton or the President of the Corporation.

## ARTICLE X

### ETHICS

Section 1. Code of Ethics. This Code of Ethics shall apply to all directors and employees of the Corporation. These policies shall serve as a guide for official conduct and are intended to enhance the ethical and professional performance of the Corporation's directors and employees and to preserve public confidence in the Corporation's mission.

Section 2. Responsibility of Directors and Employees.

a. Directors and employees shall perform their duties with transparency, without favor and shall refrain from engaging in outside matters of financial or personal interest, including other employment, that could impair independence of judgment, or prevent the proper exercises of one's official duties.

b. Directors and employees shall not directly or indirectly, make, advise, or assist any person to make any financial investment based upon information available through the director's or employee's official position that could create any conflict between their public duties and interested and their private interests.

c. Directors and employees shall not accept or receive any gift or gratuities where the circumstances would permit the inference that: (a) the gift is intended to influence the individual in the performance of official business or (b) the gift constitutes a tip, reward, or sign of appreciation for any official act by the individual. This prohibition extends to any form of financial payments, services, loans, travel reimbursement, entertainment, hospitality, thing or promise from any entity doing business with or before the Corporation.

d. Directors and employees shall not use or attempt to use their official position with the Corporation to secure unwarranted privileges for themselves, members of their family or others, including employment with the Corporation or contracts for materials or services with the Corporation.

e. Directors and employees must conduct themselves at all times in a manner that avoids any appearance that they can be improperly or unduly influenced, that they could be affected by the position of or relationship with any other party, or that they are acting in violation of their public trust.

f. Directors and employees may not engage in any official transaction with an outside entity in which they have a direct or indirect financial interest that may reasonably conflict with the proper discharge of their official duties.

g. Directors and employees shall manage all matters within the scope of the Corporation's mission independent of any other affiliations or employment. Directors,

including ex officio board members, and employees employed by more than one government shall strive to fulfill their professional responsibility to the Corporation without bias and shall support the Corporation's mission to the fullest.

h. Directors and employees shall not use Corporation property, including equipment, telephones, vehicles, computers, or other resources, or disclose information acquired in the course of their official duties in a manner inconsistent with State or local law or policy and the Corporation's mission and goals.

i. Directors and employees are prohibited from appearing or practicing before the Corporation for two (2) years following employment with the Corporation, consistent with the provisions of Public Officers Law.

j. Directors and employees shall not disclose confidential information acquired by them in the course of their official duties or use such information to further their personal interests.

Section 3. Ethics Officer. The Corporation shall designate an Ethics Officer, who shall report to the Board of Directors and shall have the duty to Counsel in confidence the Corporation's directors and employees who seek advice about ethical behavior. The designated Ethics Officer shall change every three months. The designated Ethics Officers must meet the following criteria:

- (1) Be a director of the Corporation.
- (2) Not be an employee of the City of Binghamton.
- (3) Not work for a local bank, credit union, or commercial lending institution.

## ARTICLE XI

### CONFLICTS OF INTEREST

Section 1. Purpose. The purpose of the conflicts of interest policy is to protect the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a director of the Corporation. This policy is intended to supplement but not replace any applicable state laws or regulations governing conflicts of interest.

Section 2. Definitions.

A. Interested Person. Any director, principal officer, or member of a committee with Board-delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person, which has received a loan.

B. Financial Interest. A person has a financial interest if the person has, directly or indirectly, through business, investment or family:

- (1) A loan with the Corporation;
- (2) A compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement; or
- (3) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature.

### Section 3. Procedures.

A. Duty to Disclose. In connection with any actual or possible conflicts of interest, an interested person must disclose the existence of his or her financial interest and all material facts to the directors and members of committees with Board-delegated powers considering the proposed transaction or arrangement.

B. Determining Whether a Conflict of Interest Exists. After disclosure of the financial interest and all material facts and after any discussion with the interested person, he or she shall leave the Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or committee members shall decide if a conflict of interest exists.

### C. Procedures for Addressing the Conflict of Interest.

(1) An interested person may make a presentation at the Board or committee meeting, but after such presentation, he/she shall leave the meeting during the discussion of and vote on the transaction or arrangement that results in the conflict of interest.

(2) The Chairperson of the Board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

(3) After exercising due diligence, the Board or committee shall determine whether the Corporation can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.

(4) If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the Board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Corporation's best interest and for its own benefit and whether the transaction is

fair and reasonable to the Corporation and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

D. Violation of the Conflicts of Interest Policy.

(1) If the Board or committee has reasonable cause to believe that a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

(2) If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the Board or committee determines that the member has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Section 4. Records of Proceedings.

The minutes of the Board and all Committees with Board-delegated powers shall contain:

A. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present and the Board's or committee's decision as to whether a conflict of interest in fact existed.

B. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement and a record of any votes taken in connection therewith.

Section 5. Compensation.

A. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

B. Members, Directors, or Staff who receive compensation, directly or indirectly, from the Corporation, whether as employees or independent contractors, is precluded from membership on any committee whose jurisdiction includes compensation matters.

Section 6. Annual Statements.

Each director, principal Officer and member of a committee with Board-delegated powers shall annually sign a statement which affirms that such person:

- A. Has received a copy of the conflicts of interest policy;
- B. Has read and understands the policy;
- C. Has agreed to comply with the policy; and
- D. Understands that the Corporation is tax-exempt and that in order to maintain its federal tax-exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Section 7. Periodic Reviews.

- A. To ensure that the Corporation operates in a manner consistent with its charitable purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from federal income tax, periodic reviews shall be conducted.

ARTICLE XII

AMENDMENT

Section 1. Method. These by-laws may be amended, altered or repealed at any meeting of the Board of Directors by a vote of a majority of all directors, provided that the action to be considered and acted upon is inserted in the notice or the waiver of notice of said meeting.

ARTICLE XIII

PUBLIC AUTHORITY ACCOUNTABILITY ACT COMPLIANCE

Section 1. Policies. In compliance with the PAAA the Corporation adopted several policies included in the City of Binghamton Code of Ordinances including: Records Management and Disposition (Chapter 5, 5-25, 5-27) and Public Real Estate Sales (Chapter 136).

Section 2. Annual Review and Reporting. The Corporation establishes the month of November for the review and adoption of the Annual Performance Measures, Conflict of Interest Disclosure Statement, Code of Ethics and the Confidential Evaluation of Board Performance.

ARTICLE XIV

MISCELLANEOUS

Section 1. Professional Staff. The Corporation shall implement the capability requirements set forth in Section 108 of the United States Small Business Administration (SBA) Regulations.

Section 2. Restrictions and Limitations. In addition to any and all other applicable statutes, rules and regulations, the Corporation and its directors shall comply with the



prohibition on the beneficial ownership of more than five percent of the capital stock of a project occupant or business enterprise and shall comply with the rules and regulations of the New York Job Development Authority, as set forth in Section 1825 of the Public Authorities Law.

Section 3. Gender. Words herein which denote the masculine gender shall be read as if written in the male, female or neuter gender, or the plural number, as the case may be. Said words may be construed, where appropriate, to include firms, partnerships or corporations.

I, Thomas Scanlon hereby certify these By-laws were approved by the City of Binghamton Water Street Development Corporation by Resolution 22-1 at a regular meeting held on March 7, 2022.

---

Thomas Scanlon, Secretary  
City of Binghamton Water Street Development Corporation