WEST VIRGINIA CODE: §5b-2L-3

§5B-2L-3. Definitions.

(a) *General*. — When used in this article, or in the administration of this article, terms defined in this section have the meanings ascribed to them by this section unless a different meaning is clearly required by the context in which the term is used.

(b) *Terms defined*. — As used in this article, unless the context clearly indicates otherwise:

(1) "Agreement" means a BUILD WV project agreement entered into pursuant to this article, between the Department of Economic Development and an approved company or group of multiple party project participants with respect to a project.

(2) "Approved company" means any eligible company approved by the Department of Economic Development pursuant to this article seeking to undertake a project. The Department of Economic Development may certify multiple party projects comprised of more than one approved company, as provided in this article. "Approved company" means and includes an approved multiple party project participant.

(3) "Approved costs" means costs included, as stated herein, and not excluded pursuant to the provisions of this definition, or this article, or any other provision of this code.

(A) Included costs:

(i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, delivery persons, and material persons in connection with the acquisition, construction, equipping, or installation of a project;

(ii) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(iii) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, or installation of a project which is not paid by the vendor, supplier, delivery person, contractor, or otherwise provided;

(iv) All costs of architectural and engineering services, including, but not limited to: estimates, plans and specifications, preliminary investigations and supervision of construction, installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, or installation of a project;

(v) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, or installation of a project;

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(vi) All costs required for the installation of utilities, including, but not limited to: water, sewer, sewer treatment, gas, electricity, communications, and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company or group of multiple party project participants in a manner that allows the approved company or group of multiple party project participants to attract persons; and

(vii) All other costs comparable with those described in this subdivision.

(B) *Excluded costs*. — The term "approved costs" does not include:

(i) Any portion of the cost required to be paid for the acquisition, construction, equipping, or installation of a project that is financed with governmental incentives, grants or bonds, other than the exemptions and tax credits allowable under this article. "Approved costs" does not include any portion of the cost or for which the approved company or group of multiple party project participants elects to qualify for other economic development incentive tax credits authorized under West Virginia law. The exclusion of certain costs of a project under this paragraph does not automatically disqualify the remainder of the costs of the project;

(ii) Any portion of the cost of property or space that is covered by a rehabilitated building tax credit under the provisions of §11-21-8a, §11-21-8b, §11-21-8c, §11-21-8d, §11-21-8e, §11-21-8f, or §11-21-8g of this code or §11-24-23a, §11-24-23b, §11-24-23c, §11-24-23d, §11-24-23e, §11-24-23f, or §11-24-23g of this code;

(iii) Any portion of the cost of property or space that is used, in whole or in part, as a residential timeshare, commercial timeshare, or as part of any similar arrangement; or

(iv) Any portion of the cost of property or space that is excluded from certification by the Department of Economic Development by rule or administrative notice.

(4) "Certified BUILD WV district" or "certified district" means a geographic district designated pursuant to this article as an area in which a proposed BUILD WV residential housing project may be approved for certification.

(5) "Certified BUILD WV project" or "project" means BUILD WV project that has received the certification of the Department of Economic Development in accordance with this article, and for which certification remains current and in effect. A BUILD WV project shall be for the construction of residential housing, including new construction or the rehabilitation of existing unoccupied structures.

(6) "Common areas" means, but is not limited to, lawns, roads, streets, alleys, sidewalks, parks, waterways, driveways, stairways, hallways, lobbies, corridors, sidewalks, parking lots, parking garages, community swimming pools, community laundry facilities, elevators, roofs, maintenance buildings, maintenance facilities, stairways, lobbies, corridors, and other property available for common use by all tenants and groups of tenants and their invitees.

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Common areas of a certified BUILD WV project are included as certified project property.

(7) "Corporation" or "C corporation" means a corporation that is taxed separately from its owners for federal income tax purposes under subchapter C of the Internal Revenue Code and includes a limited liability company, partnership, or other entity that is treated as a corporation for federal income tax purposes.

(8) "Department of Economic Development" means the West Virginia Department of Economic Development established under the provisions of §5B-2-1 *et seq*. of this code.

(9) "Eligible company" means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture, or any other entity operating or intending to operate a certified project, whether owned or leased, within the state that meets the standards required by the Department of Economic Development for certification under this article. An eligible company may operate, or intend to operate, directly or indirectly through a lessee. The Department of Economic Development may certify multiple party projects comprised of more than one eligible company, as provided in this article.

(10) "*Eligible taxpayer*" —

(A) For purposes of the property value adjustment tax credit, "eligible taxpayer" means any approved company:

(i) That has made qualified investment in certified BUILD WV project property or any group of multiple party project participants that has made qualified investment in certified BUILD WV project property; or

(ii) That is subject to the taxes imposed under §11-21-1 *et seq*. or §11-24-1 *et seq*. of this code, or the owners, interest holders, partners, S Corporation shareholders, or other owners of an approved company, that receive flow-through income from the approved company, that are subject to the taxes imposed under §11-21-1 *et seq*. or §11-24-1 *et seq*. of this code.

(B) "Eligible taxpayer" also means and includes those members of an affiliated group of taxpayers engaged in a unitary business with an approved company or group of multiple party project participants, in which one or more members of the affiliated group is a person subject to the tax imposed under §11-24-1 *et seq*. of this code: *Provided*, That application of the property value adjustment tax credit against the tax imposed under §11-24-1 *et seq*. of this code is subject to the provisions of §11-24-13a(g) and §11-24-13c(b)(2) of this code, and is limited to the single entity, from among the affiliated group of taxpayers, that earned entitlement to the credit. Credit may apply solely against that single entity's proportionate share of taxable income. No tax credit earned by one member of the affiliated group, may be used, in whole or in part, by any other member of the affiliated group.

(11) "Final approval" or "certification" means the action taken by the Secretary of the

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Department of Economic Development to certify a BUILD WV project.

(12) "Flow-through entity," "conduit entity," or "pass through entity" means an S corporation, partnership, limited partnership, limited liability partnership, or limited liability company. The term "Flow-through entity," "conduit entity," or "pass through entity" includes a publicly traded partnership as that term is defined in section 7704 of the Internal Revenue Code that has equity securities registered with the securities and exchange commission under section 12 of title I of the securities exchange act of 1934, 15 USC 78l: *Provided*, That, a partnership, limited liability company, or other entity or organization that is treated as a C corporation for federal income tax purposes shall be subject to income allocation, apportionment, and taxation under §5B-24-1 *et seq*. of this code.

(13) "Infrastructure" means, and is limited to, the real and tangible personal property located in a project that is directly used in, and necessary for, providing broadband internet access, electricity, water, natural gas, sewer service, sewage treatment service, rubbish disposal, and other utility services for residential units within a certified BUILD WV project. An electrical charging facility for charging electrical motor vehicles, or electrical hybrid motor vehicles of certified BUILD WV project residents may be treated as an infrastructure component of a certified BUILD WV project: *Provided*, That in no case shall any property or space that is used, in whole or in part, as a gasoline filling station or other motor vehicle fueling station constitute certified project property, or any part thereof.

(14) "Natural person" or "individual" means a human being.

(15) "Partner" includes a partner in a partnership, and a member in a syndicate, group, pool, joint venture, or organization.

(16) "Partnership" means and includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on and which is not a trust or estate, a corporation, or a sole proprietorship.

(17) "Person" means and includes any natural person, corporation, limited liability company, flow-through entity, or partnership.

(18) "Taxpayer" means any person subject to the taxes imposed under §11-21-1 *et seq*. or §11-24-1 *et seq*. of this code.

(19) "Tax year" or "taxable year" means the tax year of the taxpayer for federal income tax purposes.

(20) "Timeshare" means an agreement or arrangement in which two or more parties share the ownership of, or right to use, property (e.g. an apartment or condominium) that authorizes occupation by each party, typically for periods of less than a year. "Timeshare" includes a deeded contract providing such an arrangement and a fractional ownership

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agreement or arrangement. “Timeshare” means and includes property that the subject of any such agreement or arrangement.

(21) “Unitary business” means a unitary business as defined in §11-24-3a of this code.

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