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BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

ENTERED
Office of Proceedings
October 28, 2015
Part of
Public Record

WILLIAM A. MULLINS

(202) 663-7823 (Direct Dial)
E-Mail: wmullins@bakerandmiller.com

October 28, 2015

Via E-Filing

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Martin Marietta Materials, Inc. – Continuance in Control Exemption – Rock & Rail, Inc., FD 35966

Dear Ms. Brown:

On October 9, 2015, Martin Marietta Materials, Inc. (“MMM”) filed a Verified Notice of Exemption (“Notice”) for a transaction pursuant to which MMM would acquire indirect ownership of a Class III carrier, Rock & Rail, Inc. Because the transaction was and is the subject of continued commercially sensitive negotiations among the respective parties, MMM filed the executed Letter of Intent (“LOI”) for the transaction in accordance with 49 C.F.R. §1180.6(a)(7)(ii) as a Confidential document. MMM also filed a concurrent Motion for a Protective Order (“Motion”) seeking permission to file the LOI under seal. The Motion was granted on October 23, 2015.

Since that time, the Board has requested that MMM provide a redacted copy of the LOI for inclusion in the public record. Accordingly, please find a redacted “Public” version of the LOI executed in connection with the Notice. Should you have any questions, please contact the undersigned counsel for MMM.

Sincerely,



William A. Mullins
Attorney for Martin Marietta Materials, Inc.

Enclosure

cc: Roselyn Bar

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35966

**MARTIN MARIETTA MATERIALS, INC.
— CONTINUANCE IN CONTROL EXEMPTION —
ROCK & RAIL, INC.**

VERIFIED NOTICE OF EXEMPTION

**EXHIBIT B – DRAFT AGREEMENT
PUBLIC VERSION (REDACTED)**



Daniel L. Grant
Senior Vice President, Strategy & Development

July 22, 2015

Strictly Private and Confidential



Sent via email



Thank you for facilitating the process between Martin Marietta and [REDACTED] regarding our interest in [REDACTED] Rock & Rail LLC [REDACTED]

We are pleased to submit this [REDACTED] letter of intent (the "LOI") which sets forth the principal terms of a possible transaction (the "Transaction") pursuant to which Martin Marietta, or any affiliate thereof, would acquire [REDACTED]

Our LOI seeks to provide members with value, speed, and confidentiality based on Martin Marietta's successful acquisition record [REDACTED]. We have dedicated a senior team to lead the Transaction and are prepared to commence due diligence as soon as possible.

This letter and all discussions related hereto [REDACTED]

[REDACTED] The terms outlined in this LOI are subject to customary operational, financial, and legal due diligence of the Business by Martin Marietta. In addition, this LOI is subject to the execution of one or more definitive, written agreements that are mutually agreeable to the parties.

The general terms and conditions of this LOI are as follows:

1. Purchase Price [REDACTED]

[REDACTED]

2. **Sources of Funding:** [REDACTED]
[REDACTED] We have a strong balance sheet and access to credit facilities and other sources that provide sufficient funds for this Transaction.

3. **Business to be Conveyed** [REDACTED]
[REDACTED]

4. **Due Diligence:** Martin Marietta [REDACTED]
[REDACTED] we would be able to complete due diligence on a timely basis. This LOI is conditioned upon satisfactory completion of due diligence evaluations by Martin Marietta of the Business.

Martin Marietta would expect to conduct on-site and documentary due diligence of the Business typical for a transaction of this size, including [REDACTED]

[REDACTED]
The

[REDACTED]
July 22, 2015

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parties hereto agree that they will work diligently and in good faith towards a Transaction that would be closed (the "Closing") upon the earlier of [REDACTED]

[REDACTED]
This LOI also is subject to negotiation and execution of a definitive agreement(s) containing warranties, representations and indemnifications that are customary in transactions of this nature. [REDACTED]

[REDACTED] All interest will accrue for the benefit of [REDACTED]. The purpose of the escrow is to secure the performance by the members of their obligations under the indemnity provision and/or purchase price adjustment provided for in the definitive agreement.

The representations and warranties in the definitive agreement would be joint and several [REDACTED] subject to limitations on [REDACTED]

[REDACTED] Depending on the structure of the transaction, [REDACTED]

We would expect that our team would proceed with due diligence while we are negotiating definitive agreements. During due diligence, we would expect to engage an outside law firm and environmental consultants that regularly work with us.

Martin Marietta recognizes and appreciates the need to minimize disruption to the operations of the Business and maintain a high degree of confidentiality during the due diligence process. We are prepared to commit the resources necessary to conduct our due diligence process as expeditiously as possible and with appropriate discretion.

5. **Exclusivity:** [REDACTED] that Martin Marietta has and will incur significant costs and expenses in preparing and reviewing documents and performing its due diligence review in connection with the Transaction, [REDACTED]. In order to induce Martin Marietta to undertake such effort and expense, [REDACTED] agrees that it will negotiate only with Martin Marietta in connection with the Business and [REDACTED] except for the sale of assets in the ordinary course of business. [REDACTED]

[REDACTED]
July 22, 2015

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[REDACTED]
Martin Marietta is hereby granted the exclusive right to perform due diligence and to [REDACTED] other than the sale of assets in the ordinary course of business. Martin Marietta's rights with respect to breach of this provision will survive termination of this LOI.

6. **Confidentiality:** The terms of the confidentiality letter dated [REDACTED] and Martin Marietta shall remain in full force notwithstanding the execution of this LOI. This LOI is being presented with the

7.

8. **Management and Employees:**

[REDACTED] Subject to due diligence and our customary employment procedures, we would expect to offer job opportunities to most of the Business' employees, other than the employees listed on Exhibit B hereto. Martin Marietta would not assume any expense or liability arising out of pre-closing periods in connection with any of the employees in the Business, regardless of whether the employee accepts a job offer with Martin Marietta.

9. **Authorization and Approvals:** This LOI has been reviewed with the senior management team, which includes the Chairman, President & CEO. [REDACTED]

[REDACTED] The proposed Transaction would require the approval of the Board of Directors of Martin Marietta. Our Directors and management are prepared to respond quickly. Approval of the Transaction by the Board of Directors of Martin Marietta will be obtained not later than 15 days after the definitive agreement is finalized. [REDACTED]

10. **Conditions to Closing:** We anticipate conditions to closing typical for a transaction of this size and type. Conditions would include, but are not limited to, i) negotiation and execution of definitive agreements with customary representations, warranties and indemnities; ii) approval of the transaction by the Board of Directors of Martin Marietta and [REDACTED] iii) Martin Marietta's completion and sole satisfaction with the results of its due diligence review, within the



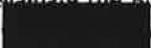
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periods specified above; and iv) obtaining all third party or governmental consents, estoppels and approvals, including without limitation, those of any landlords.

11. Key Contacts: Please direct correspondence to the following individuals.

Daniel L. Grant
Senior Vice President, Strategy & Development
Martin Marietta
Office: 919-783-4685
Cell: 925-785-0063
Email: dan.grant@martinmarietta.com

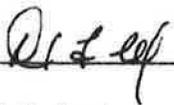
Oliver W. Brooks
Director, Strategy & Development
Martin Marietta
Office: 919-783-4506
Cell: 919-302-9292
Email: oliver.brooks@martinmarietta.com

Thank you again for the opportunity to evaluate the Business. It is our hope this LOI outlines how we would pursue a Transaction that provides  with liquidity, speed, and certainty.

If the terms and conditions set forth in this LOI are acceptable, please sign where indicated on the following signature page and return one copy of the correspondence to us.

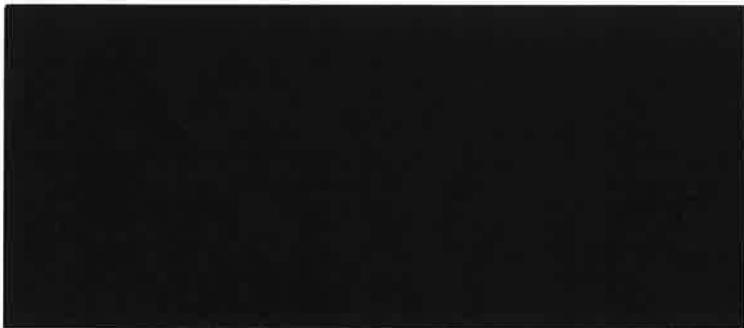
Sincerely,

MARTIN MARIETTA

By:  _____

Daniel L. Grant
Senior Vice President, Strategy & Development
Martin Marietta

AGREED AND ACCEPTED:





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[REDACTED]
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EXHIBIT B
EXCLUDED EMPLOYEES

The following employees and any obligations related to these employees will remain [REDACTED] and be excluded from the potential transaction. Martin Marietta will assume no expense or liability related to the employees listed below.

[REDACTED]