

PREPARED BY AND
AFTER RECORDING, RETURN TO:

P. Branden Gross
Dentons Bingham Greenebaum LLP
300 West Vine Street, Suite 1200
Lexington, KY 40507
Direct Dial: 859.288.4632
Fax: 859.367.3844
branden.gross@dentons.com

FIRST AMENDMENT TO
GRANT OF EASEMENT

This First Amendment (this "Amendment") to the GRANT OF EASEMENT (the "Easement Agreement") is made as of the last date signed below by EXETER NEWTOWN LAND, LLC, a Delaware limited liability company ("Grantor"), whose current address is 101 West Elm Street, Suite 600, Conshohocken, Pennsylvania 19428, and LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT, an urban county government created pursuant to KRS Chapter 67A ("Grantee"), whose current address is 200 East Main Street, Lexington, Kentucky 40507. Capitalized terms used but not defined herein will have the meanings given to them in the Easement Agreement.

RECITALS

WHEREAS, Lexmark International, Inc., a Delaware corporation ("Original Grantor"), and Grantee entered into that certain Grant of Easement dated April 1, 2010, of record in **Deed Book 2937, Page 1**, of the Fayette County Clerk's office, concerning certain property located in Lexington, Fayette County, Kentucky; being defined therein as the Permanent Easement and more particularly described in Exhibit A thereto.

WHEREAS, Original Grantor conveyed to Grantor a portion of Grantor's Property (as defined in the Easement Agreement), as more particularly described on **Exhibit 1** hereto and more commonly known as **1180 Newtown Pike, Lexington, Kentucky**.

WHEREAS, Grantor has determined that it is desirable and appropriate to relocate and/or modify a portion of the Path (as defined in the Easement Agreement) to allow for the development of the property more particularly described on **Exhibit 1** hereto and more commonly known as **1180 Newtown Pike, Lexington, Kentucky**.

WHEREAS, Grantee has reviewed and approved the plans and specifications (the "Plans to Modify") for such relocation and/or modification of the Path.

NOW, THEREFORE, the parties hereby covenant and agree as follows:

WITNESSETH:

That for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor has, subject to the conditions set forth below, bargained and sold and does hereby further give, grant and convey unto Grantee, its successors and assigns, in perpetuity, the right to install, construct, inspect, maintain, operate, rebuild and/or repair a path known as Legacy Trail as to the land within the Modified Easement Area (as defined below).

The grant of the easement and the exercise of the rights and privileges herein granted, are subject to and expressly include the following:

1. Land to be Released from Permanent Easement. That portion of the Permanent Easement, included within the tracts or parcels of land more particularly described on **Exhibit 2** hereto, and shown on **Exhibit 2A** hereto, is hereby released from and shall no longer be a portion of the Permanent Easement and the Path located thereon may be removed by Grantor in accordance with the Plans to Modify.

2. Land to be Added to Permanent Easement. Those tracts or parcels of land more particularly described on **Exhibit 3** hereto, and shown on **Exhibit 3A** hereto, are hereby added to and shall be a portion

of the Permanent Easement (the “Modified Easement Area”) on which to relocate and/or modify the Path in accordance with the Plans to Modify.

3. Relocation and/or Modification of Path. Within seven (7) months of the recording of this Amendment, Grantor shall, at Grantor's expense, obtain all necessary permits and relocate and/or modify the Path in accordance with the Plans to Modify (the “Modified Path”). Grantor agrees that the Path shall remain open, as practical, during all phases of construction during the aforementioned development of Grantor’s Property, and Grantor agrees to manage such construction in a safe and responsible manner and to properly sign and control such construction activity to give users of the Path adequate-advance warning and notice relative to detours and closings. Upon completion of the Modified Path, the Modified Path shall be deemed a part of the Path, and Grantee shall be solely responsible, at its sole cost and expense, for its maintenance and repair, and all signs, lights and/or other equipment installed in connection therewith, in a condition of good order and repair and free of safety hazards.

4. New Access Drives and Streets. Grantee acknowledges that the Plans to Modify include the construction of new access drives and/or streets, whether public or private, on Grantor’s Property that will cross on, over and/or under the Path for vehicular and pedestrian access to and from Grantor’s Property. Grantee agrees that such vehicular and pedestrian use is not inconsistent with the purposes of the Easement Agreement. Grantor has the right, from time to time, to maintain, repair and replace said access drives and/or streets. Grantor has the right, but not the obligation, from time to time, to dedicate all or any portion of said access drives and/or streets to the appropriate public authority.

5. Maintenance and Repairs. Notwithstanding anything to the contrary, Grantee agrees not to perform any maintenance, repairs, or other work to the Path that will require an interruption of any utility services to Grantor’s property or interfere with the operations of the occupant(s) of Grantor’s property or such occupant(s) access to and from Grantor’s property (collectively, “Interruption”), except in compliance with the following requirements (unless an emergency precludes compliance with one or more of the following requirements, in which case Grantee will comply to the extent reasonably possible): (i) no such work may occur during the period from November 1 to January 15 or June 15 through July 31 (“Holiday Season”) without the prior written consent of Grantor; (ii) Grantee will provide at least thirty (30) days prior written notice to Grantor before performing any work; (iii) such work may only occur during times reasonably approved by Grantor (and it will be reasonable for Grantor to require such work to occur outside of normal business hours); and (iv) Grantee will use commercially reasonable efforts to minimize any Interruption.

6. Amendment to Record Plat. Grantor is hereby authorized to amend any recorded plat of Grantor’s Property to reflect the relocation and/or modification of the Path and other appurtenant rights set forth in this Amendment.

7. No Further Amendments. Except as amended hereby, the terms and provisions of the Easement Agreement remain unchanged, are and shall remain in full force and effect unless and until modified or amended in writing in accordance with its terms, and such are hereby ratified and confirmed by Grantor and Grantee.

TO HAVE AND TO HOLD the above-described Modified Easement Area together with all rights, privileges, appurtenances, and improvements thereunto belonging unto Grantee, its successors and assigns forever, for the purposes and uses herein designated.

And Grantor does hereby covenant to and with said Grantee, its successors and assigns forever, that it is lawfully seized in fee simple of said property and has good right to sell and convey the Modified Easement Area conveyed herein, and that it will **WARRANT SPECIALLY** said title. Provided, however, this Modified Easement Area and the foregoing warranty are expressly subject to the terms and conditions of all easements and rights of way, public and private, that exist with respect to the Easement Area as of the date hereof and this Modified Easement Area is expressly subject and subordinate to all such easements and rights of way and to all rights of third parties arising there under.

The parties do hereby certify pursuant to KRS 382.135 that the consideration stated herein is the full actual consideration paid for the property transferred herein, and that the estimated fair cash value of the property conveyed is ONE DOLLAR (\$1). Grantee joins this Amendment for the purpose of certifying the consideration, as authorized by Resolution No. ____-2021 passed by the Lexington-Fayette Urban County Council on _____, 2021 and for purposes of agreeing to the terms and conditions hereof. This conveyance is exempt from real estate transfer tax pursuant to KRS 142.050.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

GRANTEE:

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT, an urban county government created pursuant to KRS Chapter 67A

By: _____

Print Name: _____

Its: _____

Date Signed: _____

STATE OF KENTUCKY)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this the ____ day of _____, 2021, by _____, as _____ of **LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government created pursuant to KRS Chapter 67A, on behalf of said urban county government.

[AFFIX SEAL]

Print Name: _____
NOTARY PUBLIC
My Commission Expires: _____
Notary ID No.: _____

Exhibit 1

(Description of 1180 Newtown Pike, Lexington, Kentucky)

Being all of Lot 2 (being a consolidated of Parcels 1 and 2) as shown on Consolidation Minor Subdivision Plat Lexmark International Corporation, Lots 1 & 2, 725 West New Circle Road & 1180 Newtown Pike, Lexington, Fayette County, Kentucky, of record in Plat Cabinet S, Slide 118, in the office of the Fayette County, Kentucky; said property being more commonly known as 1180 Newtown Pike.

Being a part of the same property conveyed to IBM Information Products Corporation, a Delaware corporation, from International Business Machines Corporation, a New York corporation, by deed dated December 28, 1990, of record in Deed Book 1571, page 341, as corrected by Corrective Deed dated effective as December 28, 1990, of record in Deed Book 1573, page 381; said IBM Information Products Corporation is now known as Lexmark International, Inc., as evidenced by Certificate of Amendment of Certificate of Incorporation, of recorded on April 30, 1991, in Corporate Record Book 168, page 682. All references are to the Fayette County Clerk's office.

Exhibit 2

(Land to be Released from Permanent Easement)

EA Partners, PLLC



CIVIL ENGINEERS • LAND SURVEYORS • LANDSCAPE ARCHITECTS
3111 WALL STREET
LEXINGTON, KENTUCKY 40513
PHONE (859) 296-9889
FACSIMILE (859) 296-9887

EXHIBIT "2"

July 8, 2021

Boundary Description
Permanent Access Easement Release
1180 Newtown Pike (a portion of)
Lexington, Fayette County, Kentucky

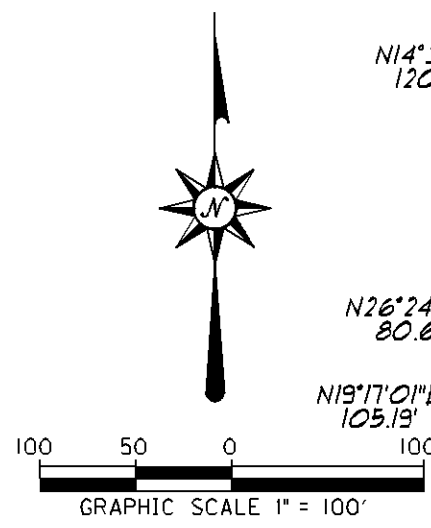
BEGINNING AT A POINT in the northwestern most corner of Lot 2 as shown on the Consolidation Minor Subdivision Plat of Lexmark International Corporation Lots 1 & 2 known as 1180 Newtown Pike as recorded in Plat Cabinet S, Slide 118 of record in the Fayette County Clerk's office, and having Kentucky State Plane North Zone Coordinates of N 212,002.45, E 1,570,828.86; thence with the northern property line of Lot 2 South 67 Degrees 29 Minutes 17 Seconds East a distance of 40.06 feet to a point; thence leaving the said property line and with the eastern edge of the existing Legacy Trail Easement as recorded in Deed Book 2937, Page 1 of record in the Fayette County Clerk's office for the following six (6) calls: South 10 Degrees 56 Minutes 57 Seconds West a distance of 167.62 feet to a point; thence South 18 Degrees 50 Minutes 01 Seconds West a distance of 474.82 feet to a point; thence South 36 Degrees 51 Minutes 07 Seconds East a distance of 120.57 feet to a point; thence along an arc 148.78 feet to the left, having a radius of 180.00 feet, the chord of which is South 60 Degrees 31 Minutes 53 Seconds East for a distance of 144.58 feet; thence along an arc 130.84 feet to the right, having a radius of 120.00 feet, the chord of which is South 52 Degrees 58 Minutes 28 Seconds East for a distance of 124.46 feet; thence South 21 Degrees 44 Minutes 17 Seconds East a distance of 82.90 feet to a point; thence leaving the eastern edge of the Legacy Trail Easement South 68 Degrees 16 Minutes 35 Seconds West a distance of 40.00 feet to a point in the western edge of the existing Legacy Trail Easement; thence with the western edge of the existing easement for the following ten (10) calls: North 21 Degrees 44 Minutes 17 Seconds West a distance of 82.90 feet to a point; thence along an arc 87.23 feet to the left, having a radius of 80.00 feet, the chord of which is North 52 Degrees 58 Minutes 28 Seconds West for a distance of 82.97 feet; thence along an arc 181.84 feet to the right, having a radius of 220.00 feet, the chord of which is North 60 Degrees 31 Minutes 52 Seconds West for a distance of 176.71 feet to a point; thence North 36 Degrees 51 Minutes 07 Seconds West a distance of 163.61 feet to a point; thence North 19 Degrees 17 Minutes 01 Seconds East a distance of 105.19 feet to a point; thence North 26 Degrees 24 Minutes 31 Seconds East a distance of 80.62 feet to a point; thence North 14 Degrees 31 Minutes 12 Seconds East a distance of 120.42 feet to a point; thence North 19 Degrees 17 Minutes 01 Seconds East a distance of 150.00 feet to a point; thence North 07 Degrees 58 Minutes 25 Seconds East a distance of 50.99 feet to a point; thence North 19 Degrees 17 Minutes 01 Seconds East a distance of 146.96 feet to the **POINT OF BEGINNING** and containing 1.25 acres (54,643 square feet).

Exhibit 2A

(Survey of Land to be Released from Permanent Easement)

POINT OF BEGINNING
N 212,002.45
E 1,510,828.86

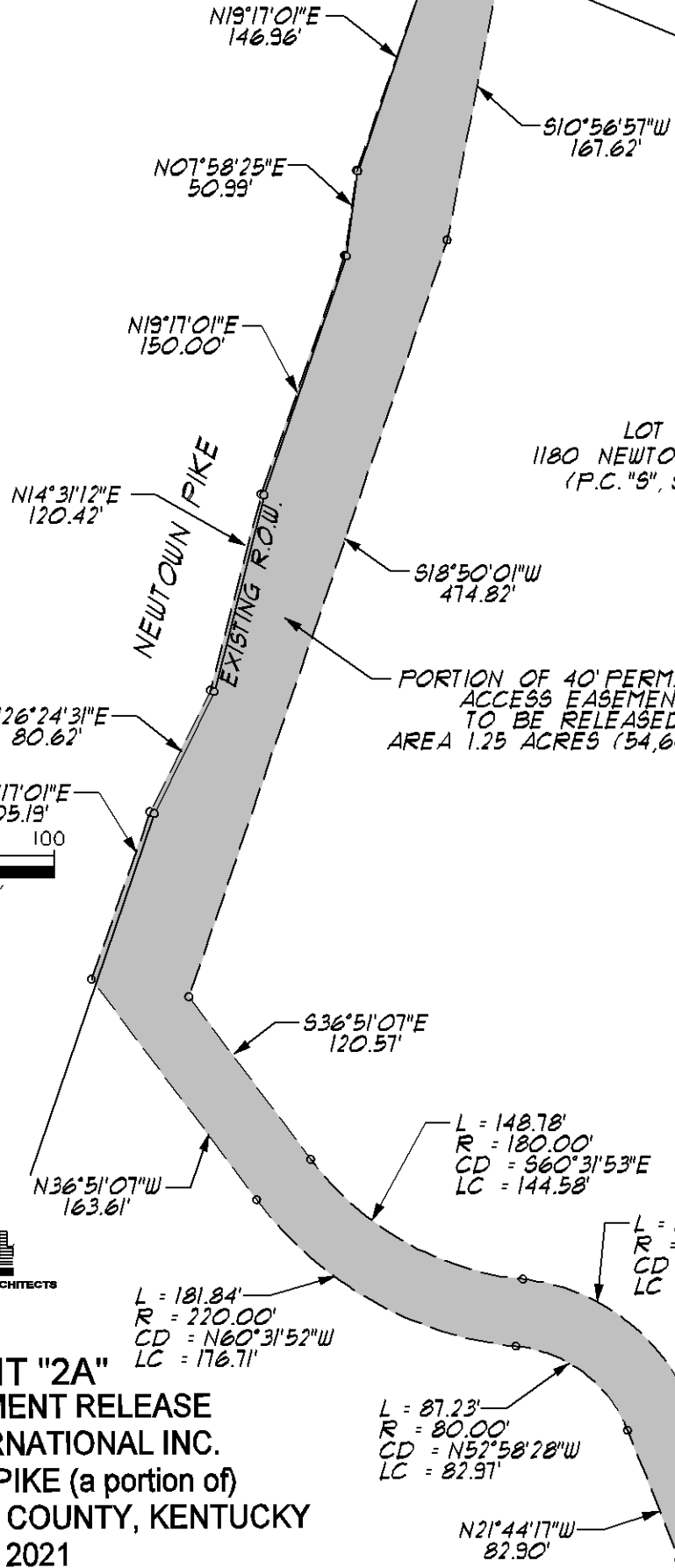
NEWTOWN SPRINGS, LLC
(D.B. 2413, PG. 82)



NEWTOWN PIKE
EXISTING R.O.W.

LOT 2
1180 NEWTOWN PIKE
(P.C. "S", SL. 118)

PORTION OF 40' PERMANENT
ACCESS EASEMENT
TO BE RELEASED
AREA 1.25 ACRES (54,643 S.F.)



EA Partners, PLLC



CIVIL ENGINEERS • LAND SURVEYORS • LANDSCAPE ARCHITECTS
3111 WALL STREET
LEXINGTON, KENTUCKY 40513
PHONE (606) 296-0689
FACSIMILE (606) 296-9987

EXHIBIT "2A"

**ACCESS EASEMENT RELEASE
LEXMARK INTERNATIONAL INC.**

**1180 NEWTOWN PIKE (a portion of)
LEXINGTON, FAYETTE COUNTY, KENTUCKY**

JULY, 2021

Exhibit 3

(Land to be Added to Permanent Easement)

EA Partners, PLLC



CIVIL ENGINEERS • LAND SURVEYORS • LANDSCAPE ARCHITECTS
3111 WALL STREET
LEXINGTON, KENTUCKY 40513
PHONE (859) 296-9889
FACSIMILE (859) 296-9887

EXHIBIT “3”

July 30, 2021

Boundary Description

Permanent Access Easement

1180 Newtown Pike (a portion of)

Lexington, Fayette County, Kentucky

BEGINNING AT A POINT in the northwestern most corner of Lot 2 as shown on the Consolidation Minor Subdivision Plat of Lexmark International Corporation Lots 1 & 2 known as 1180 Newtown Pike as recorded in Plat Cabinet S, Slide 118 of record in the Fayette County Clerk’s office and having Kentucky State Plane North Zone Coordinates of N 212,002.45, E 1,570,828.86, thence with said line South 67 Degrees 29 Minutes 17 Seconds East a distance of 40.06 feet to a point; thence leaving the northern property line and with the proposed easement for the following ten (10) calls: South 13 Degrees 39 Minutes 41 Seconds West a distance of 69.23 feet to a point; thence South 05 Degrees 40 Minutes 42 Seconds West a distance of 39.01 feet to a point; thence along an arc 15.15 feet to the left, having a radius of 30.00 feet, the chord of which is South 09 Degrees 56 Minutes 09 Seconds East for a distance of 14.98 feet to a point; thence South 24 Degrees 23 Minutes 54 Seconds East a distance of 98.70 feet to a point; thence along an arc 109.21 feet to the right, having a radius of 120.00 feet, the chord of which is South 01 Degrees 40 Minutes 23 Seconds West for a distance of 105.48 feet to a point; thence along an arc 160.28 feet to the left, having a radius of 180.00 feet, the chord of which is South 02 Degrees 14 Minutes 05 Seconds West for a distance of 155.04 feet to a point; thence South 23 Degrees 16 Minutes 30 Seconds East a distance of 107.22 feet to a point; thence along an arc 106.73 feet to the right, having a radius of 145.00 feet, the chord of which is South 02 Degrees 11 Minutes 16 Seconds East for a distance of 104.34 feet to a point; thence along an arc 56.74 feet to the left, having a radius of 80.00 feet, the chord of which is South 01 Degrees 25 Minutes 10 Seconds East for a distance of 55.56 feet to a point; thence South 21 Degrees 44 Minutes 17 Seconds East a distance of 219.76 feet to a point in the eastern line of the existing Legacy Trail Easement; thence leaving said line South 68 Degrees 16 Minutes 35 Seconds West a distance of 40.00 feet to a point in the western line of the existing Legacy Trail Easement; thence leaving the existing easement and with the proposed easement for the following ten (10) calls: North 21 Degrees 44 Minutes 17 Seconds West a distance of 219.74 feet to a point; thence along an arc 85.11 feet to the right, having a radius of 120.00 feet, the chord of which is North 01 Degrees 25 Minutes 07 Seconds West for a distance of 83.34 feet to a point; thence along an arc 77.29 feet to the left, having a radius of 105.00 feet, the chord of which is North 02 Degrees 11 Minutes 13 Seconds West for a distance of 75.56 feet to a point; thence North 23 Degrees 16 Minutes

30 Seconds West a distance of 107.22 feet to a point; thence along an arc 195.90 feet to the right, having a radius of 220.00 feet, the chord of which is North 02 Degrees 14 Minutes 05 Seconds East for a distance of 189.49 feet to a point; thence along an arc 72.80 feet to the left, having a radius of 80.00 feet, the chord of which is North 01 Degrees 40 Minutes 23 Seconds East for a distance of 70.32 feet to a point; thence North 24 Degrees 23 Minutes 54 Seconds West a distance of 98.70 feet to a point; thence along an arc 37.67 feet to the right, having a radius of 70.00 feet, the chord of which is North 08 Degrees 58 Minutes 59 Seconds West for a distance of 37.21 feet to a point; thence North 05 Degrees 40 Minutes 42 Seconds East a distance of 38.46 feet to a point; thence North 08 Degrees 28 Minutes 08 Seconds East a distance of 39.82 feet to a point in the eastern right of way of Newtown Pike; thence with the said right of way North 18 Degrees 59 Minutes 58 Seconds East a distance of 40.51 feet to the **POINT OF BEGINNING** and containing 0.92 acres (40,022 square feet).

Exhibit 3A

(Survey of Land to be Added to Permanent Easement)

POINT OF BEGINNING
N 212.002.45
E 1,510,828.86

NEWTOWN SPRINGS, LLC
(D.B. 2413, PG. 82)

N18°59'58"E - 40.51'
N08°28'08"E - 39.82'
N05°40'42"E - 38.46'
L = 37.67'
R = 70.00'
CD = N08°58'59"W
LC = 37.21'

S13°39'41"W
69.23'
S05°40'42"W
39.01'

L = 15.15'
R = 30.00'
CD = S09°56'03"E
LC = 14.98'

N24°23'54"W
98.70'

S24°23'54"E - 98.70'

L = 72.80'
R = 80.00'
CD = N01°40'23"E
LC = 70.32'

LOT 2
1180 NEWTOWN PIKE
(P.C. "S", SL. 118)
L = 109.21'
R = 120.00'
CD = S01°40'23"W
LC = 105.48'

PROPOSED 40' PERMANENT
ACCESS EASEMENT
AREA 0.92 ACRES (40,022 S.F.)

L = 160.28'
R = 180.00'
CD = S02°14'05"W
LC = 155.04'

L = 195.90'
R = 220.00'
CD = N02°14'05"E
LC = 189.49'

S23°16'30"E
107.22'

N23°16'30"W
107.22'

L = 77.29'
R = 105.00'
CD = N02°11'13"W
LC = 75.56'

L = 106.73'
R = 145.00'
CD = S02°11'16"E
LC = 104.34'

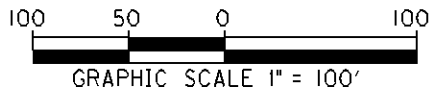
L = 56.74'
R = 80.00'
CD = S01°25'10"E
LC = 55.56'

L = 85.11'
R = 120.00'
CD = N01°25'07"W
LC = 83.34'

S21°44'17"E
219.76'

N17°41'11"W - 219.74'

S68°16'35"W - 40.00'
EXISTING 40'
PERMANENT
ACCESS EASEMENT
(D.B. 3937, PG. 1)



EXISTING R.O.W.
NEWTOWN PIKE

EA Partners, PLLC



CIVIL ENGINEERS • LAND SURVEYORS • LANDSCAPE ARCHITECTS
3111 WALL STREET
LEXINGTON, KENTUCKY 40613
PHONE: (606) 296-9883
FACSIMILE: (606) 296-9887

EXHIBIT "3A"
PROPOSED PERMANENT 40'
ACCESS EASEMENT
LEXMARK INTERNATIONAL INC.
1180 NEWTOWN PIKE (a portion of)
LEXINGTON, FAYETTE COUNTY, KENTUCKY
JULY, 2021