



Interoffice Memorandum


APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

FEB 24 2015 CS/BS

AGENDA ITEM

February 2, 2015

TO: Mayor Teresa Jacobs
—AND—
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director 
Community, Environmental and Development
Services Department

CONTACT PERSON: **Dean Stites, Concurrency Management Official** 
Concurrency Management Office
407 836-5601

SUBJECT: February 24, 2015 – Consent Item
School Concurrency Mitigation Agreement OC-14-026
Phillip's Parke Parcel ID#: 13-23-28-0000-00-007

On September 16, 2008, the Board of County Commissioners (BCC) amended Chapter 30, Orange County Code (the "Code"), to include the legislative requirements of school concurrency. The provisions in the Code are based on statutory requirements and on the terms of the First Amended and Restated Interlocal Agreement for Public School Facility Planning and Implementation of School Concurrency entered into by the County, the School Board of Orange County (the "School Board") and municipalities within the County (June 10, 2008, as amended from time to time, the "Interlocal Agreement"). Section 30-622 of the Code requires applicants to submit proposed school proportionate share mitigation agreements to the Concurrency Management Official, following negotiation with the School Board and the County Attorney's Office, for review and recommendation to the BCC. This is the ninth such agreement to come to the BCC.

The subject School Concurrency Mitigation Agreement (the "Mitigation Agreement") is among the County, the School Board, and Phillips Parke XVI, LLC, a Florida limited liability company. The Agreement is for 42 single-family residential units located off of Turkey Lake Road between Winder Lynne Lane and Nina Rosa Drive in District 1. The Mitigation Agreement is necessary because the project affects certain area high school(s), which currently operate below the adopted level of service standard.

Pursuant to Section 30-622 of the Code, if there is insufficient available school capacity within a Concurrency Service Area to meet the demand created by the proposed

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residential development, and the applicant and the School Board have agreed upon mitigation to satisfy the school concurrency requirements for the proposed residential development, then the applicant, School Board, and County must memorialize the terms of the mitigation in an agreement.

Pursuant to Section 163.3180, Florida Statutes, the Applicant is entitled to impact fee credits on a dollar for dollar basis for any proportionate share mitigation paid for the same need. Additionally, the Interlocal Agreement provides that the Applicant shall receive credit against any proportionate share mitigation due for mitigation payments made under a Capacity Enhancement Agreement for the same project. In accordance with the formula set forth in Section 30-622(4)(b)9 of the Code, the School Board has determined that although there would be a proportionate share mitigation payment due for this project, as a result of the mitigation paid under the Applicant's existing Capacity Enhancement Agreement, the credits that would be owed to the Applicant would be more than the proportionate share mitigation due, therefore, no proportionate share mitigation payment is due under this agreement. However, this Agreement does require the prepayment of school impact fees and payment of Capacity Reservation Fees prior to approval of the plat.

The School Board approved this agreement on January 13, 2015.

ACTON REQUESTED: Approval of School Concurrency Mitigation Agreement OC-14-026 Project Name: Phillip's Parke Parcel ID#: 13-23-28-0000-00-007 by and among The School Board of Orange County, Florida, Orange County, Florida, and Phillips Parke XVI, LLC. District 1

JVW/DS: rep

Attachment

After recording return to:

Julie C. Salvo, AICP
Orange County Public Schools
445 West Amelia Street
Orlando, Florida 32801-1129

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

**SCHOOL CONCURRENCY
MITIGATION AGREEMENT
OC-14-026**

Project Name: Phillip's Parke

Parcel ID#: 13-23-28-0000-00-007

THIS SCHOOL CONCURRENCY MITIGATION AGREEMENT ("Agreement"), is entered into by and among THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA a body corporate and political subdivision of the State of Florida, ("School Board"); ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, ("County" or "Applicable Local Government") and Phillips Parke XVI, LLC, a Florida limited liability company, whose address is 7575 Dr. Phillips Blvd., Suite 245, Orlando, Florida 32819 (the "Applicant"), collectively referred to herein as the "Parties."

RECITALS:

WHEREAS, the School Board, Orange County, and the municipalities within Orange County have entered into that certain "First Amended and Restated Interlocal Agreement For Public School Facility Planning and Implementation of Concurrency" (the "Interlocal Agreement"), and

WHEREAS, pursuant to Section 18.6 of the Interlocal Agreement, an applicant submitting a School Concurrency Determination Application for approval of a Site Plan that will generate additional students in a School Concurrency Service Area in which there is insufficient Available School Capacity to accommodate the anticipated additional students must enter into a Proportionate Share Mitigation Agreement to prevent school overcrowding attributable to the anticipated additional students generated by the Residential Development as specified in the Interlocal Agreement; and

WHEREAS, an Applicant must submit the School Concurrency Determination Application along with a Development Analysis which identifies the proposed location of the Residential Development, the number of Residential Units that will be created, a phasing schedule (if applicable), a map demonstrating land use and zoning classifications for the Applicant's property, as well as all other information required pursuant to Section 18.5 of the Interlocal Agreement, to the County; and

WHEREAS, Applicant is the fee simple owner, or authorized agent of the owner, of that certain tract of land located in County Commission District 1 in Orange County, Florida, as more particularly described on **Exhibit "A,"** attached hereto and incorporated herein by reference (the "Property"), the location of which is illustrated by a map attached hereto as **Exhibit "B,"** and incorporated herein by reference; and

WHEREAS, the Applicant has submitted a School Concurrency Determination Application and Development Analysis to the County in connection with a proposal to obtain approval for a preliminary subdivision plan in order to develop forty-two (42) single family Residential Units on the Property (the "Project") and the County has forwarded the School Concurrency Determination Application and Development Analysis to the School Board; and

WHEREAS, pursuant to Section 10 of the Interlocal Agreement, Applicant and the School Board entered into the School Mitigation Agreement for Capacity Enhancement #OC-12-009 ("CEA") with an effective date of April 19, 2013, and recorded in Book 10594, Page 4200, Document Number 20130344100, Public Records of Orange County, Florida to address the impact caused by the Project on the applicable School Attendance Zone; and

WHEREAS, the School Board has reviewed and evaluated the Applicant's School Concurrency Determination Application and Development Analysis as required by Section 18.6 of the Interlocal Agreement, and has determined that based on the current adopted Level of Service standards for the School Concurrency Service Areas within which the Property is located and the anticipated new School Capacity that will be available in the first three (3) years of the current District Facilities Work Program to serve the proposed Residential Development, there is insufficient Available School Capacity at the high school level to serve the new single-family Residential Units within the School Concurrency Service Areas for the Project or within adjacent School Concurrency Service Areas as determined by an Adjacency Review; and

WHEREAS, approving the School Concurrency Determination Application without requiring Proportionate Share Mitigation for the impacts of the proposed new Residential Units will either create or worsen school overcrowding in the applicable School Concurrency Service Areas; and

WHEREAS, the Applicant has agreed to enter into this Agreement with the School Board and County to provide Proportionate Share Mitigation proportionate to the demand for Public School Facilities to be created by the Project, as more particularly set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

1. **INCORPORATION OF RECITALS.** The foregoing recitals are true and correct and are hereby incorporated into this Agreement by reference as if fully set forth herein.
2. **DEFINITION OF MATERIAL TERMS.** Any capitalized terms used herein but not defined shall have the meaning attributed to such term in the Interlocal Agreement.
3. **LEGALLY BINDING COMMITMENT.** This Agreement constitutes a legally binding commitment by the Applicant to mitigate for the impacts of the new Residential Units

for which the Applicant is seeking approval pursuant to the School Concurrency Determination Application and is intended to satisfy the requirements of Florida law and the Orange County Code.

4. **PROPORTIONATE SHARE MITIGATION.** Pursuant to Section 19.2 of the Interlocal Agreement, Applicant is obligated to provide Proportionate Share Mitigation (“Proportionate Share”) in order to meet the demand for School Capacity created by the Project and to provide additional capacity for high school students. Based on the formula contained in Section 19.2 of the Interlocal Agreement, the School Board has determined that Applicant does not owe a payment to the School Board for Proportionate Share. Notwithstanding the foregoing, Applicant is still obligated to pay any and all amounts due for capacity enhancement mitigation pursuant to the terms of the CEA prior to approval of the Applicant’s plat for the Property by Orange County, Florida.

5. **INTENTIONALLY OMITTED.**

6. **IMPACT FEE CREDIT.**

a. **Prepayment.** Pursuant to the terms of the CEA, payment of School Impact Fees for the Project shall be paid by the Applicant prior to approval of the Applicant’s plat for the Property by Orange County, Florida, in the amounts specified in Article V of Chapter 23 of the County Code (the “School Impact Fee Ordinance”). However, Applicant hereby acknowledges that all pre-paid School Impact Fee amounts contained in this Agreement are estimates and that Applicant shall be obligated to pay the School Impact Fee at the rates in effect at the time Applicant applies for building permits for the Project in accordance with the School Impact Fee Ordinance.

b. **Credits.** The School Board shall notify the County of the amount of the pre-paid School Impact Fees for the Project, which are currently estimated to be TWO HUNDRED SEVENTY-FOUR THOUSAND FIFTY AND 00/100 DOLLARS (\$274,050.00) and shall request a School Impact Fee credit account in the amount of such School Impact Fees actually paid on behalf of the Applicant upon receipt of such pre-paid School Impact Fees.

7. **ISSUANCE OF SCHOOL CONCURRENCY RECOMMENDATION.** Upon final execution of this Agreement by all Parties hereto, the School Board shall issue a School Concurrency Recommendation documenting that School Capacity will be available for the Project. This recommendation may be used by the County to issue a Capacity Encumbrance Letter in accordance with Section 18.7 of the Interlocal Agreement.

8. **SCHOOL CAPACITY ENCUMBRANCE AND RESERVATION.** Within twenty-one (21) days of the Effective Date of this Agreement (as defined in Section 24 below), and upon payment of any applicable administrative fees, County shall issue to the Applicant a Capacity Encumbrance Letter sufficient to encumber school capacity for the Project .

At such time as Applicant has prepaid the School Impact Fees further described in Section 6.a. of this Agreement and paid the applicable installment(s) of the School Capacity Reservation Fee described in Section 9 below, School Capacity shall be reserved for the total units in the Project as reflected on the application; provided, however, the Applicant shall be required to apply for and obtain a School Capacity Reservation Certificate (“SCRC”) prior to the

expiration of the Capacity Encumbrance Letter and provided further if the Applicant fails to make any of the required School Capacity Reservation Fee payments described in Paragraph 9 below or if this Agreement is terminated, such reserved School Capacity shall lapse and be returned to the applicable capacity bank. Applicant may utilize funds available in any School Impact Fee Credit account set up as a result of this Agreement to pay said School Capacity Reservation Fees.

9. CAPACITY RESERVATION FEE. In order to reserve capacity for the total units in the Project and in order to receive a SCRC, prior to expiration of Applicant's Capacity Encumbrance Letter, Applicant shall be required to pay a School Capacity Reservation Fee for the Project in accordance with Section 30-599 of the Orange County Code which School Capacity Reservation Fee may be paid with any School Impact Fee Credit account set up as a result of this Agreement. As of the date of this Agreement, the total School Capacity Reservation Fees for the Project are estimated to be TWO HUNDRED SEVENTY-FOUR THOUSAND FIFTY AND 00/100 DOLLARS (\$274,050.00) and are anticipated to be paid in accordance with the schedule below. However, Applicant shall be obligated to pay the School Capacity Reservation Fees at the rates in effect at the time Applicant applies for the SCRC for the Project and in accordance with the schedule contained within the SCRC at the time of issuance.

- a. Upon application for a SCRC:
\$ 91,350.00; and
- b. 12 months from date of SCRC:
\$ 91,350.00; and
- c. 24 months from date of SCRC:
\$ 91,350.00 (the remaining balance of the SCRC fees).

Notwithstanding the schedule provided by this Section, Applicant shall be required to prepay all of the School Impact Fees prior to receipt of a SCRC in accordance with terms of the CEA and Section 6 hereof. The Applicant may choose to use any prepaid School Impact Fees paid pursuant to the CEA and this Agreement as a credit towards School Capacity Reservation Fees due under the SCRC.

10. TERMINATION. This Agreement shall terminate and Applicant shall forfeit any administrative fees paid, as well as any capacity encumbered or reserved under the following circumstances, unless the County and the School Board agree to an extension of the Applicant's Certificate of School Concurrency:

- a. The Applicable Local Government does not approve the preliminary subdivision plan within one hundred eighty (180) days from approval of the preliminary subdivision plan by the County's Development Review Committee.. In such event, all Proportionate Share Mitigation paid by the Applicant shall be refunded to the Applicant by the School Board.

b. The Applicant fails to proceed in good faith in a diligent and timely manner and secure at least one Building Permit for a unit other than a model home within three (3) years of recording of the plat. In such case, this Agreement shall be terminated and any encumbered or reserved school capacity shall be returned to its applicable capacity bank. The Applicant will not be entitled to a refund of any portion of the Proportionate Share Mitigation paid under this Agreement, and will only be entitled to receive a 90% refund of the Capacity Reservation Fee assuming all other applicable conditions are met.

11. COVENANTS RUNNING WITH THE LAND. This Agreement shall be binding, and shall inure to the benefit of the heirs, legal representatives, successors, and assigns of the parties, and shall be a covenant running with the Property and be binding upon the successors and assigns of the Applicant and upon any person, firm, corporation, or entity who may become the successor in interest to the Property.

12. NOTICES. Any notice delivered with respect to this Agreement shall be in writing and be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

School Board Superintendent
 445 West Amelia Street
 Orlando, Florida 32801

With a Copy to: Office of Planning & Governmental Relations
 445 West Amelia Street
 Orlando, Florida 32801

Owner/Applicant: Phillips Parke XVI, LLC
 c/o Robert Holston
 7575 Dr. Phillips Blvd., Suite 245
 Orlando, FL 32819

County: Orange County Community, Environmental, and Development Services
 Department
 Manager, Fiscal and Operational Support Division
 201 South Rosalind Avenue, 2nd Floor
 Orlando, Florida 32801

13. CAPTIONS AND PARAGRAPH HEADINGS. Captions and paragraph headings contained in this Agreement are for convenience and reference only. They in no way define, describe, extend or limit the scope or intent of this Agreement.

14. NO WAIVER. No waiver of any provision of this Agreement shall be effective unless it is in writing, and signed by the party against whom it is asserted. Any such written

waiver shall only be applicable to the specific instance to which it relates, and shall not be deemed to be a continuing or future waiver.

15. EXHIBITS. All Exhibits attached hereto are a part of this Agreement and are fully incorporated herein by this reference.

16. AMENDMENTS. No modification, amendment, or alteration to the terms or conditions contained herein shall be binding upon the parties hereto unless in writing and executed by all the Parties to this Agreement.

17. ASSIGNMENT, TRANSFER OF RIGHTS. The Applicant may assign its rights, obligations and responsibilities under this Agreement to a third-party purchaser of all or any part of fee simple title to the Property; provided, however, that any such assignment shall be in writing and shall require the prior written consent of all of the Parties hereto, which consent shall not be unreasonably withheld, conditioned, or delayed. Such consent may be conditioned upon the receipt by the other parties hereto of the written agreement of the assignee to comply with conditions and procedures to aid in the monitoring and enforcement of the assignee's performance of the Applicant's obligations with regard to Proportionate Share Mitigation under this Agreement. The assignor under such assignment shall furnish the Parties with a copy of the written assignment within ten (10) days of the date of execution of same.

18. COUNTERPARTS. This Agreement may be signed in counterparts, each of which may be deemed an original, and all of which together constitute one and the same agreement.

19. RECORDING OF THIS AGREEMENT. The School Board agrees to record this Agreement, at Applicant's expense, within fourteen (14) days after the Effective Date, in the Public Records of Orange County, Florida.

20. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement among the Parties with respect to the subject matter addressed herein, and it supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, among the Parties.

21. SEVERABILITY. If any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable provision will be stricken from the Agreement, and the balance of the Agreement will remain in full force and effect as long as doing so would not affect the overall purpose or intent of the Agreement.

22. APPLICABLE LAW. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida and in accordance with the Orange County Code and venue for any action to enforce the provisions of this Agreement shall be in the Ninth Judicial Circuit Court in and for Orange County, Florida.

23. ATTORNEY'S FEES. In the event any party hereto brings an action or proceeding, including any counterclaim, cross-claim, or third party claim, against any other party hereto arising out of this Agreement, each party in such action or proceeding, including appeals therefrom, shall be responsible for its own attorney fees.

24. EFFECTIVE DATE. The effective date of this Agreement shall be the date when the last one of the parties has properly executed this Agreement as determined by the date set forth immediately below their respective signatures (the “Effective Date”).

Signatures on Following Page

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives on the dates set forth below each signature:

Signed, sealed and delivered in the

“SCHOOL BOARD”

Presence of:

THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA, a corporate body organized and existing under the constitution and laws of the State of Florida

Melvine L Miller-Smith
Print Name: Melvine L Miller-Smith

By: [Signature]
William E. Sublette, Chairman

Date: January 27, 2015

Melvine L Miller-Smith
Print Name: Melvine L Miller-Smith
Barbara M Jenkins
Print Name: Barbara M Jenkins

Attest [Signature]
Barbara M. Jenkins, as its Secretary and Superintendent

[Signature]
Print Name: Catherine Comporell

{Corporate Seal}

Approved as to form and legality by the Office of the General Counsel to the School Board of Orange County, Florida this 20th day of January 2015 for its exclusive use and reliance.

[Signature]
Eileen D. Fernandez, Esq., Associate General Counsel

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 21st day of January, 2015, by William Subke as the Chairman of The School Board of Orange County, Florida, a corporate body organized and existing under the constitution and laws of the State of Florida on behalf of the School Board. Said person (check one) is personally known to me or _____ produced _____ as identification.

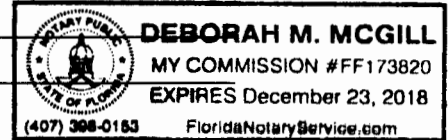
Deborah M. McGill

Printed Name: Deborah M. McGill

Notary Public, State of Florida

Commission No. _____

My commission expires: _____



STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 23 day of January, 2015, by Barbara M. Jenkins, as Secretary and Superintendent of The School Board of Orange County, Florida, a corporate body organized and existing under the constitution and laws of the State of Florida on behalf of the School Board. Said person (check one) is personally known to me or _____ produced _____ as identification.

Cheryl A. Blythe

Printed Name: Cheryl A. Blythe

Notary Public, State of Florida

Commission No. EE 207104

My commission expires: August 30, 2016

Signed, sealed and delivered in the

“APPLICANT”

Presence of:

Phillips Parke XVI, LLC, a Florida limited liability company

[Signature]

By: Robert Holston

Title: Manager

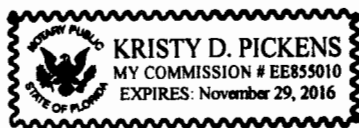
Date: 11/21/14, 2014

Print Name: Eric Papalun

Print Name: Wesley B. [Signature]

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 21st day of November, 2014, by Robert Holston as Manager of Phillips Parke XVI, LLC, an agent on behalf of said corporation/partnership/limited liability company. Said person (check one) is personally known to me or produced _____ as identification.



[Signature]
Printed Name: Kristy Pickens

Notary Public, State of Florida

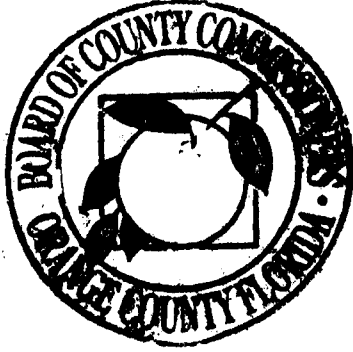
Commission No. EE855010

My commission expires: 11/29/16

“COUNTY”

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners



By: *Teresa Jacobs*

TJ Teresa Jacobs
Orange County Mayor

Date: 2.24.15

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: *Craig A. Stopyna*

CS Deputy Clerk

Exhibit A

IVEYS SUBDIVISION LEGAL DESCRIPTION

Provided by: Bishman Surveying and Mapping, Dated: 08/14/2012

BEGIN NW CORNER OF THE SW 1/4 OF THE NW 1/4 OF SECTION 13, TOWNSHIP 23, RANGE 28, AND RUN E 1334.5 FT., S 348.5 FT., W 1333.2 FT., N 356.9 FT. TO THE POINT OF BEGINNING, ORANGE COUNTY, FLORIDA.

LESS AND EXCEPT: THAT PORTION CONVEYED TO THE ORANGE COUNTY, FLORIDA PURSUANT TO THAT DEED RECORDED JULY 26, 1990 IN OFFICIAL RECORDS BOOK 4203, PAGE 3361, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

CONTAINING 10.647 ACRES, MORE OR LESS.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PART OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 13, TOWNSHIP 23 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID SOUTHWEST 1/4 OF THE NORTHWEST 1/4; THENCE RUN S89°56'37"E, ALONG THE NORTH LINE OF SAID SOUTHWEST 1/4 OF THE NORTHWEST 1/4, 12.88 FEET, TO THE EASTERLY RIGHT OF WAY LINE OF TURKEY LAKE ROAD PER OFFICIAL RECORDS BOOK 4203, PAGE 3361, AND THE POINT OF BEGINNING; THENCE CONTINUE S89°56'37"E, ALONG SAID NORTH LINE 1315.05 FEET, TO THE EAST LINE OF SAID SOUTHWEST 1/4 OF THE NORTHWEST 1/4; THENCE RUN S01°29'32"E, ALONG SAID EAST LINE, 348.50 FEET; THENCE RUN S89°41'52"W, 1312.28 FEET, TO SAID EASTERLY RIGHT OF WAY LINE OF TURKEY LAKE ROAD; THENCE RUN N02°43'10"W, ALONG SAID EASTERLY RIGHT OF WAY LINE 281.62 FEET; THENCE RUN N01°08'48"E, ALONG SAID EASTERLY RIGHT OF WAY LINE, 75.31 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 10.647 ACRES MORE OR LESS.



Exhibit B - Map



**Planning &
Governmental Relations**
Orange County Public Schools



**Jurisdiction: Orlando
School Board Dist.: # 4
Parcel ID: 13-23-28-0000-00-007
Acreage: +/- 10.65 ac**

**Affected Schools
ES: Windy Ridge
MS: Chain of Lakes
HS: Dr. Phillips**

**OC-14-026
Phillip's Parke CMA**