

PINs: See EXHIBIT A

**ADDRESS:
504 COMMONS ROAD
NAPERVILLE, IL 60563**

**PREPARED BY:
CITY OF NAPERVILLE
LEGAL DEPARTMENT
630/420-4170**

**RETURN TO:
CITY OF NAPERVILLE
CITY CLERK'S OFFICE
400 SOUTH EAGLE STREET
NAPERVILLE, IL 60540**

PZC Case #16-1-136

ORDINANCE NO. 17 -

**AN ORDINANCE AUTHORIZING THE EXECUTION OF AN
ANNEXATION AGREEMENT FOR THE PROPERTY LOCATED AT
504 COMMONS ROAD (AVENIDA)**

WHEREAS, BCT, LLC (“Owner”) is the owner of the real property located at the southwest corner of Mill Street and Commons Road (504 Commons Road), legally described on **Exhibit “A”** and depicted on **Exhibit “B”** (“Subject Property”) and has filed a petition for annexation of the Subject Property into the City of Naperville (“City”); and

WHEREAS, Avenida Senior Living, LLC (“Petitioner”) is the contract purchaser of the Subject Property; and

WHEREAS, Petitioner has filed a petition to rezone the Subject Property to OCI (Office, Commercial and Institutional District) upon annexation in order to develop an age restricted 146-unit multi-family residential building; and

WHEREAS, in addition to seeking approval of the Annexation Agreement provided for herein, Petitioner has also requested City approval of ordinances approving annexation,

rezoning, a preliminary plat of subdivision and deviations, and a conditional use for multi-family residential units and variances to reduce the lot area and number of parking spaces on the Subject Property (all five ordinances hereinafter cumulatively referenced as the “Avenida Ordinances”); and

WHEREAS, Petitioner has requested that the City delay recordation of the Avenida Ordinances with the DuPage County Recorder for a period of time not to exceed three hundred and sixty-five (365) calendar days after their passage in order to allow the Petitioner to finalize the purchase and sale agreement for the Subject Property and to obtain ownership of the Subject Property; and

WHEREAS, subject to approval of the Avenida Ordinances, the City has agreed to the proposed timeframe for their recordation with the DuPage County Recorder as set forth herein. In the event that all of the Avenida Ordinances are not recorded within the timeframe described above, the City and Petitioner agree that the Avenida Ordinances shall not be recorded and shall be deemed to be automatically null and void with no further action being taken by the City or the Petitioner.

WHEREAS, subject to the provisions set forth above, the Petitioner is ready, willing, and able to enter into an annexation agreement and to perform the obligations required herein and as set forth in the Naperville Municipal Code (“Code”), as amended from time to time; and

WHEREAS, the Petitioner and the City of Naperville have fully complied with the statutory and Code provisions required for the approval and execution of an annexation agreement; and

WHEREAS, the City Council of the City of Naperville has determined that, subject to the terms and conditions set forth or referenced in the Avenida Ordinances, it is in the best interests of the City of Naperville to enter into the Annexation Agreement attached hereto as **Exhibit “C”**.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule authority, as follows:

SECTION 1: The foregoing recitals are incorporated as though fully set forth in this Section 1. All exhibits referenced in this Ordinance shall be deemed incorporated and made part hereof.

SECTION 2: Within the timeframe provided for herein, Petitioner shall provide evidence of ownership of the Subject Property to the satisfaction of the City Attorney and submit a properly executed Annexation Agreement to the City along with all other documentation necessary for recordation of the Avenida Ordinances. The Mayor is then authorized and directed to execute, and the City Clerk is authorized and directed to attest, the Annexation Agreement for the Subject Property on behalf of the City. Upon confirmation that all required fees have been paid, and properly executed documents have been submitted, and subject to the provisions of Section 3 below, the City Clerk is then authorized and directed to record the Avenida Ordinances, including their Exhibits, with the DuPage County Recorder in the following order: (1) Annexation; (2) Annexation Agreement; (3) Rezoning; (4) Preliminary Plat of Subdivision; and (5) Conditional Use and Variances.

SECTION 3: If recordation of the Avenida Ordinances does not occur within three hundred and sixty-five (365) calendar days after their passage and approval, then said Avenida Ordinances shall not be recorded and shall be deemed to be automatically null and

void without any further action being required by the Petitioner or the City. Petitioner has acknowledged that in no event shall the City be liable or responsible in any manner or for any claim if this Ordinance, including the Exhibits attached hereto, is not recorded within three hundred and sixty-five (365) calendar day timeframe described herein.

SECTION 4: If any section, paragraph, or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision, shall not affect any of the remaining provisions of this Ordinance or any other City ordinance or resolution.

SECTION 5: This Ordinance shall be deemed passed upon approval of the City Council and shall be in full force and effect upon its recordation with the DuPage County Recorder.

PASSED this _____ day of _____, 2017.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2017.

ATTEST:

Steve Chirico
Mayor

Pam Gallahue, Ph.D.
City Clerk