

Executive Team

Dominic D. Brown, CPA, CFE
Chief Executive Officer

Daryn Miller, CFA
Chief Investment Officer

Jennifer Zahry, JD
Chief Legal Officer

Matthew Henry, CFE
Chief Operations Officer



Board of Retirement

Tyler Whitezell, Chair
Phil Franey, Vice-Chair
Jeanine Adams
David Couch
Juan Gonzalez
Joseph D. Hughes
Jordan Kaufman
Rick Kratt
John Sanders
Dustin Contreras, Alternate
Chase Nunneley, Alternate
Robb Seibly, Alternate

June 8, 2023

Members, Board of Retirement
Employee Bargaining Units
Requesting News Media
Other Interested Parties

Subject: Special Joint Meeting

KCERA Board of Retirement,
KCERA Property, Inc. ("KPI") Shareholders,
and
KPI Board of Directors

Ladies and Gentlemen:

A Special Joint Meeting of the KCERA Board of Retirement, as governing board of KCERA and as the sole shareholder of KCERA Property, Inc. ("KPI"), and the KPI Board of Directors will be held on Wednesday, June 14, 2023, immediately following the Regular KCERA Board of Retirement meeting in the KCERA Boardroom, 11125 River Run Boulevard, Bakersfield, California, 93311.

How to Participate: Listen to or View the Board Meeting

To listen to the live audio of the Board meeting, please dial one of the following numbers (*landline recommended for best audio*) and enter ID# 829 0109 3650:

- (669) 900-9128; U.S. Toll-free: (888) 788-0099 or (877) 853-5247

To access live audio and video of the Board meeting, please use the following:

- <https://us02web.zoom.us/j/82901093650?pwd=MVUrUHlhZm11UDVJclhwNEY1NVNCUT09>
- Passcode: 729439

Items of business will be limited to the matters shown on the attached agenda. If you have any questions or require additional service, please contact KCERA at (661) 381-7700 or send an email to administration@kcera.org.

Sincerely,

Dominic D. Brown, Chief Executive Officer

Attachments

AGENDA:

All agenda item supporting documentation is available for public review on KCERA's website at www.kcera.org following the posting of the agenda. Any supporting documentation that relates to an agenda item for an open session of any regular meeting that is distributed after the agenda is posted and prior to the meeting will also be available for review at the same location.

**AMERICANS WITH DISABILITIES ACT
(Government Code §54953.2)**

Disabled individuals who need special assistance to listen to and/or participate in the meeting of the Board of Retirement may request assistance by calling (661) 381-7700 or sending an email to administration@kcera.org. Every effort will be made to reasonably accommodate individuals with disabilities by making meeting materials and access available in alternative formats. Requests for assistance should be made at least two (2) days in advance of a meeting whenever possible.

CALL TO ORDER

ROLL CALL (IN PERSON)

AB 2449 REMOTE APPEARANCE(S)

Items 1 and/or 2 withdrawn from agenda if no trustees will have a need to appear via teleconference:

The first two items on the agenda are reserved for trustees who have a need to appear via teleconference due to a "just cause" need or an "emergency circumstance." Trustees who have notified this Board before agenda-posting will be called upon and will provide a general description of their need to attend via teleconference as allowed by law. Trustees who were not able to notify the Board in advance of posting and have a need to attend via teleconference will state their notification or request when called upon to do so. All trustees appearing via teleconference will need to disclose any adult person(s) present in the room of their remote location and their relationship to such person(s). Trustees appearing remotely are reminded to keep their cameras on throughout the meeting.

1. JUST CAUSE CIRCUMSTANCE(S):

- a) The following Trustee(s) have notified the Board of a "Just Cause" to attend this meeting via teleconference. (See Government Code § 54953).
 - NONE
- b) Call for Trustee(s) who wish to notify the Board of a "Just Cause" to attend this meeting via teleconference. (See Government Code § 54953).

2. EMERGENCY CIRCUMSTANCE(S):

- a) The following Trustee(s) have requested the Board approve their attendance of this meeting via teleconference due to an “Emergency Circumstance.” (See Government Code § 54953).
- NONE
- b) Call for Trustee(s) requesting the Board approve their attendance of this meeting via teleconference due to an “Emergency Circumstance”. (See Government Code § 54953).

TAKE ACTION ON REQUEST(S) FOR REMOTE APPEARANCE

3. [Discussion and appropriate action by the KCERA Board of Retirement, as governing board of KCERA and as sole shareholder of KPI, regarding the potential transfer of ownership of KCERA’s headquarters from KPI to KCERA and dissolution of KPI presented by Fiduciary Counsel Ashley K. Dunning, and Courtney K. Krause, Nossaman LLP, Chief Executive Officer Dominic Brown, and Chief Legal Officer Jennifer Zahry – APPROVE RESOLUTION; AUTHORIZE STAFF TO TAKE ALL STEPS NECESSARY TO TRANSFER PROPERTY TO KCERA; AND DIRECT THE KPI BOARD OF DIRECTORS TO TRANSFER THE KCERA PROPERTY AND DISSOLVE KPI](#)
4. [Discussion and appropriate action by the KPI Board of Directors to authorize and consent to the transfer of its interest in the KCERA Property to KCERA and to dissolve KPI presented by Fiduciary Counsel Ashley K. Dunning, and Courtney K. Krause, Nossaman LLP – APPROVE WRITTEN CONSENT; AUTHORIZE SIGNING OF DOCUMENTS REQUIRED TO TRANSFER THE KCERA PROPERTY FROM KPI TO KCERA AND TAKE OTHER ACTION NECESSARY TO CONSUMMATE THE TRANSFER TO KCERA AND DISSOLVE KPI](#)

PUBLIC COMMENTS

5. The public is provided the opportunity to comment on agenda items at the time those agenda items are discussed by the Board. This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification and, through the Chair, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. Speakers are limited to two minutes. Please state your name for the record prior to making a presentation.

REFERRALS TO STAFF, ANNOUNCEMENTS OR REPORTS

6. On their own initiative, Board members may make a brief announcement, refer matters to staff, subject to KCERA's rules and procedures, or make a brief report on their own activities.
7. Adjournment

KCERA Property, Inc. (KPI)



**Dominic D. Brown - CEO, Jennifer Zahry - CLO, Daryn Miller - CIO,
Matt Henry - COO, Angela Kruger - CFO, Aimee Morton - ASO**

June 14, 2023

www.kcera.org

Background

- KPI is a title holding company created to manage risk during construction of KCERA's building and to retain tax exempt status.
- Because KPI's corporate formalities are numerous and administratively burdensome, the KPI Board of Directors made a referral to staff to look for opportunities to streamline operations.
- KCERA staff has performed legal, investment, financial, actuarial and administrative analysis to determine the best course of action.
 - KCERA staff has endeavored to consider all aspects of a possible change in accounting treatment from investment asset to capital asset if KPI were to be dissolved.



Administrative Considerations



- The burden of administering KPI is significant and costly for Trustees and staff.
- The building must be appraised annually.
- Expenses are paid by check and two KPI Directors must approve transactions and sign checks.
- Outside CPA firm prepares an annual tax return, which is reviewed and signed by a KPI Director.
- KPI has a separate budget and capital improvements must be approved by both the Board of Retirement and the KPI Directors.
- KPI has a quarterly compilation performed by an outside CPA firm.
- KPI meetings are separate from KCERA meetings and follow corporate bylaws for administration, noticing, agenda posting, etc.

Legal Considerations

- Effective mitigation of personal liability risks
- Actions required to dissolve
- Need for title insurance
- Cost and consequences of dissolving holding company



Investment Considerations

- KPI is currently held as a real estate investment in the portfolio.
- KCERA CIO and CFO calculated IRR to be 4% from inception, which is less than the assumed rate of return. (~\$150,000/year)



Financial Considerations

- Investment assets are appreciable assets, while capital assets are depreciable assets.
- Historical cost of land: \$877,811
- Historical cost of building: \$3,998,780
- Change in accounting treatment would require prior period adjustment and the cost of future depreciation will be \$150,714 for 18 remaining years.
- KCERA utilizes 100% of the office space for ongoing KCERA operations and there is no room to sub-lease.



Actuarial Considerations



- Because KPI is accounted for as an investment, it is expected to return the assumed rate of return.
- Contribution rates are calculated on total assets, so merely switching from an investment asset (fair market value) to a capital asset (net book value) does not impact contribution rates.
- Any underperformance increases the unfunded liability and is amortized over 15 years, which increases plan sponsor contribution rates.
- Depreciation expense is included in normal experience and increases contribution rates.

Legal Process for the Potential Transfer of Ownership of Headquarters Building from KPI to KCERA

Presented by
Ashley Dunning and Courtney Krause, Partners
Pensions, Benefits & Investments Group
Nossaman LLP



Overview of Legal Process

- Approval of transfer of ownership of real estate from KPI to KCERA
- Legal transfer of real estate
- Dissolution of KPI

Joint Meeting and Resolutions

- KPI and KCERA may hold a joint meeting
- Each of KCERA and KPI adopt resolutions, as provided with agenda backup, authorizing:
 - (1) the transfer of the ownership of the real estate from KPI to KCERA and
 - (2) the dissolution of KPI

Steps to Transfer Real Estate

- Following approval of resolutions:
 - File a Deed of Trust
 - File a Preliminary Change of Ownership Report (“PCOR”)
 - File any other legal documents customarily required to legally change title
 - After the transfer of the real estate has occurred, KCERA should contact the Kern County Assessor’s office to confirm that the real estate is now directly owned by KCERA and is entitled to continue its exception from property taxes

Steps to Dissolve KPI

- Following completion of transfer of real estate:
 - File a Certificate of Dissolution with the California Secretary of State
 - File final federal Form 990 and California 190 returns within 4 months and 15 days after date of KPI's dissolution (extensions are available, if needed)

Questions?

Thank you!

Staff Recommendation and Impacts

- Dissolve KPI and reclassify the asset from Investment Asset to Capital Asset.
 - Change in accounting treatment will:
 - Create a one-time prior period adjustment to net position for \$107,224.
 - Increase depreciation expense in future years, which will increase contribution rates by an immaterial amount.
 - Increase investment performance, which will decrease contribution rates by an immaterial amount.
 - Change in treatment will relieve Trustees and staff of administrative burdens to focus time and money on KCERA mission and core services.

**BEFORE THE BOARD OF RETIREMENT
KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
RESOLUTION No. 2023-02**

In the matter of:

**APPROVAL OF TRANSFER OF PROPERTY BY KCERA PROPERTY, INC. ("KPI")
AND DISSOLUTION OF KPI**

Ayes:

Noes:

Absent:

Dominic D. Brown,
Secretary to the Board of Retirement,
Kern County Employees' Retirement Association

RESOLUTION

Section 1. WHEREAS:

- (a) In 2008, Kern County Employees' Retirement Association ("**KCERA**") entered into an agreement (the "**Agreement**") to purchase that certain property with improvements located at 1125 River Run Boulevard, Bakersfield, California 93311 (the "**KCERA Property**"). KCERA's intent was to use an existing building or otherwise construct a building on the KCERA Property as its principal address and offices.
- (b) When KCERA entered into the Agreement, it was concerned about potential liabilities stemming from ownership and operation of the KCERA Property and

construction of improvements thereon. In order to mitigate these potential liabilities, KCERA explored various options for holding the KCERA Property, including forming a separate entity to hold the KCERA Property. During this period, KCERA also reviewed an informal survey of retirement systems governed by the California County Employees Retirement Law of 1937 (“**CERL**”). KCERA found that of the CERL retirement systems that had established separate entities to purchase and hold real property, all had formed corporations.

- (c) In October 2008 KCERA approved the formation of a separate corporate entity for the purpose of holding the KCERA Property. Specifically, KCERA formed KCERA Property, Inc. (“**KPI**”), a California corporation, corporate number C3173667, by filing Articles of Incorporation with the Secretary of State of the State of California (the “**CA SOS**”) on November 6, 2008 (the “**KPI Articles**”). KPI is also governed by the Bylaws KPI, dated November 24, 2008 (the “**KPI Bylaws**”). KCERA is the sole shareholder of KPI (the “**Shareholder**”).
- (d) In the time since KPI’s formation, the potential liability and related costs associated with ownership of the KCERA Property have drastically shifted. First, the construction-related risks are now outside of the statute of limitations, and are no longer a relevant concern. Second, regarding tax liabilities, KCERA has received a determination letter from the Internal Revenue Service (“**IRS**”), confirming that KCERA is exempt from federal income tax as a “qualified” retirement plan under Internal Revenue Code (“**Code**”) section 401(a); KCERA caused KPI to obtain tax-exempt status under section 501(c)(25) of the Code

and comparable provisions of the California tax laws, and KPI files a Form 990 exempt organization return with the IRS and comparable return with the California Franchise Tax Board (the “**FTB**”); and the KCERA Property is not on the property tax rolls of Kern County. Third, KCERA is subject to governmental immunity statutes that protect individual trustees and officers from individual tort liability, unless the trustees or officers personally committed a tortious act against another that was deemed not to be within the course and scope of their responsibilities as an agent of KCERA. Fourth, KCERA maintains sufficient insurance to cover liabilities incurred through the ownership of real property, and has confirmed its ability to self-insure against real property liabilities as well.

- (e) In addition to considering the foregoing new risk and liability analysis, KCERA and KPI have reevaluated the burden caused by compliance with the necessary corporate formalities for KPI. As a corporation, KPI must comply with certain and specific corporate formalities, including without limitation regular filings with the CA SOS; regular meetings of the Shareholder and the board of directors of KPI (the “**KPI Board**” and each individually a “**KPI Director**”); special meetings of the Shareholder or Board as necessary; and minutes of meetings or actions by written consent for all formal actions by the entity; annual tax reports with the IRS and FTB; and annual reports with the CA SOS. Compliance with the corporate formalities is required in order to preserve the liability protection offered by the corporate structure and otherwise to be in good standing under California and federal tax and other laws.

- (f) Compliance with corporate formalities requires additional attention, care, and diligence. Additionally, those formalities are outside the scope of daily activities of KCERA's staff. Both the KPI Board, and the Board of Retirement of KCERA (the "**KCERA Board**" and each individually a "**KCERA Board member**") find compliance with the corporate formalities to be unduly burdensome, given the reduction in risk of liabilities. The KCERA Board further find that effecting the transfer of the KCERA Property from KPI to KCERA and subsequent dissolution and termination of KPI, with resultant elimination of these compliance costs with little significant exposure by KCERA to liabilities or contingencies as a result, would be consistent with the KCERA Board members' fiduciary duties under California law.
- (g) Because of the foregoing, the KCERA Board now desires to (i) transfer title and ownership of the KCERA Property to KCERA to hold outright, and (ii) cause the dissolution and termination of KPI. The KCERA Board intends to make the effective date of the transaction June 30, 2023, so as to file necessary documentation and effectuate the anticipated transfer and dissolution as of the end of KCERA's fiscal year.

Section 2. NOW, THEREFORE BE IT RESOLVED, by the Board of Retirement of Kern County Employees' Retirement Association as follows:

Effective as of June 30, 2023, the following actions are authorized and required of KCERA:

- 1) On behalf of KCERA as the sole Shareholder of KPI, the KCERA Board will take all actions necessary to cause and direct KPI, through its board of directors, to authorize and ratify the transfer of KPI's entire interest in and to the KCERA Property to KCERA, pursuant to a grant deed and ancillary documents to be prepared and filed or recorded by the officers of KPI or under their direction.
- 2) On behalf of KCERA as the sole Shareholder of KPI, the KCERA Board will take all actions necessary to cause and direct KPI through its board of directors to cause KPI to dissolve, wind up, liquidate, and terminate its corporate existence with the CA SOS, pursuant to such documents and instruments to be prepared and filed or recorded by the officers of KPI or under their direction, upon and conditioned on the consummation of the transfer of the KCERA Property from KPI to KCERA.

IN WITNESS WHEREOF, the above Resolution for KCERA is hereby adopted by the BOARD on this ____ day of _____ 2023.

**ACTION BY WRITTEN CONSENT
OF THE DIRECTORS
OF
KCERA PROPERTY, INC.,
a California corporation**

The undersigned, being all of the members of the Board of Directors (the “**KPI Board**” and each individually, a “**Director**”) of KCERA PROPERTY, INC., a California corporation (the “**Corporation**”), and pursuant to the provisions of section 604(a) of the California General Corporation Law (the “**GCL**”) and Section 3.12 of the Bylaws of the Corporation dated November 24, 2008 (the “**Bylaws**”), hereby waive notice of and dispense with the formality of a meeting and adopt the following resolutions, effective June 30, 2023:

Transfer of KCERA Property

WHEREAS, this Corporation was formed on November 6, 2008 by its sole shareholder, Kern County Employees’ Retirement Association (“**KCERA**” or “**Shareholder**”), for the purpose of holding that certain and specific real property commonly known as 11125 River Run Boulevard, Bakersfield, California 93311 (the “**KCERA Property**”);

WHEREAS, this Corporation is exempt from federal income and California franchise taxes under section 501(c)(25) of the Internal Revenue Code (the “**Code**”) and conforming provisions of the California Revenue and Taxation Code;

WHEREAS, the KCERA Board of Retirement (“**KCERA Board**”), at a meeting duly noticed and validly held on June 14, 2023, and as memorialized and confirmed by and through that certain resolution No. 2023-02 attached hereto as **Exhibit “A”** (the “**KCERA Resolution**”) (1) determined that it was no longer in the best interests of KCERA to continue to own and operate this Corporation in order to hold and operate the KCERA Property because of the burden and costs of complying with corporate formalities, and because other factors that normally would militate in favor of holding real estate through a separate subsidiary were not present or at least mitigated in this instance (*e.g.*, because of reduction in construction-related liability; there is no bank or other third-party debt encumbering the KCERA Property or to which the KCERA Property is otherwise subject; the fact the KCERA and no one else was a tenant of the KCERA Property); and the availability of insurance and self-insurance for KCERA as a direct owner of the KCERA Property); and (2) consequently approved the transfer of the KCERA Property to KCERA;

WHEREAS, the undersigned Directors pursuant to the KCERA Resolution are of the opinion that the best interests of this Corporation and its Shareholder will be served if this Corporation transfers its interest and ownership in the KCERA Property to Shareholder;

WHEREAS, the undersigned Directors, being familiar with the assets and liabilities of this Corporation, having reviewed the most recent financial statements and balance sheet of this Corporation and this Corporation's other books and records, and having conferred with this Corporation's regular accountants, counsel, and financial advisors, have concluded that the proposed transfer of the KCERA Property to KCERA will comply with the financial tests in section 500 and section 501 of the GCL; will not render this Corporation insolvent or otherwise unable to meet its liabilities, and will not result in a default under any non-assignment, debt-to-equity or financial covenant, or any other term or provision in any loan agreements, contracts, or other instrument to which this Corporation is or may be a party or to which its properties or assets may be subject;

RESOLVED, that this Corporation authorizes and ratifies the transfer of its entire interest in and to the KCERA Property to KCERA;

RESOLVED, that the officers of this Corporation be, and hereby are, authorized, empowered and directed, acting singly or jointly, to negotiate the definitive terms of, execute, deliver and/or file on behalf of this Corporation any and all documents such officer deems necessary or advisable in connection with the transfer of the KCERA Property from this Corporation to KCERA including, without limitation, grant deeds, escrow statements, preliminary change of ownership reports, certificates, approvals, consents, government filings, or any amendments, extensions or renewals of the foregoing; and to take or cause to be taken any and all other acts and actions, in the name and on behalf of the Corporation, as such officer deems necessary, advisable or useful in such officer's discretion to effectuate fully the foregoing resolutions and consummate the transfer of the KCERA Property from this Corporation to KCERA.

Dissolution and winding up of Corporation

WHEREAS, as a result of the foregoing transfer of the KCERA Property from this Corporation to KCERA this Corporation will no longer have any substantial assets or operations;

WHEREAS, pursuant to section 1900 of the GCL, any corporation may elect to voluntarily to wind up and dissolve by the vote of the shareholders holding shares representing 50 percent or more of the voting power;

WHEREAS, the KCERA Board provided in the foregoing KCERA Resolution that, upon the consummation of the transfer of the KCERA Property from this Corporation to KCERA, this Corporation can and should dissolve, liquidate and wind up its affairs, and terminate its existence;

WHEREAS, the undersigned Directors pursuant to the KCERA Resolution are of the opinion that the best interests of this Corporation and its Shareholder will be served if this Corporation upon the consummation of the transfer of the KCERA Property from this Corporation to KCERA liquidates, dissolves and winds up its affairs pursuant to section 1900 *et seq.* of the GCL;

RESOLVED, that this Corporation upon the consummation of the transfer of the KCERA Property from this Corporation to KCERA be, and conditioned upon such consummation it hereby is, dissolved, and authorized and empowered to liquidate, dissolve and wind up its affairs;

RESOLVED, that the KPI Board shall take such actions, or cause to be taken such actions, at all times in compliance with the Bylaws and the GCL, as will as quickly as possible (a) liquidate the Corporation's assets remaining after the transfer of the KCERA Property to KCERA; (b) distribute the proceeds from such liquidation to creditors of the Corporation in satisfaction of liabilities of the Corporation; and (c) distribute the proceeds from such liquidation (to the extent remaining after application of the foregoing *clause (b)*) to the Shareholder according to the Bylaws and the GCL;

RESOLVED, that upon completion of the foregoing liquidation and distributions, the KPI Board shall take such actions, or cause to be taken such actions, at all times in compliance with the Bylaws and the GCL, as will as quickly as possible confirm the Corporation's dissolution and terminate the Corporation's existence in the official records of the California Secretary of State (California "SOS") and any other jurisdiction in which the Corporation shall have qualified to do business (including, without limitation, filing of a Certificate of Dissolution with the SOS);

RESOLVED, that upon completion of the foregoing liquidation and distributions and the foregoing termination of the Corporation, the KPI Board shall take such actions, or cause to be taken such actions, as are necessary to prepare and duly and timely file a final federal Form 990 (Return of Organization Exempt from Income Tax) and comparable California return.

Further Resolutions

RESOLVED, that any of the actions heretofore taken by the Directors or officers of this Corporation, or any employee or agent of the Corporation on the direction of a Director or an officer of the Corporation, within the terms of the foregoing resolutions are hereby ratified and confirmed as the act and deed of the Corporation; and

RESOLVED, that the Directors, and officers of the Corporation be, and they hereby are, acting singly or jointly, authorized, empowered and directed to take or cause to be taken any and all other acts and actions, in the name and on behalf of this Corporation, as such Director or officer deems necessary, advisable or useful in each such Director's or officer's discretion to effectuate fully the foregoing resolutions;

|

RESOLVED, that the execution and delivery of any document by a Director or officer of the Corporation, or taking of any action by a Director or officer on behalf of the Corporation, will constitute conclusive evidence of such Director's or officer's determination that the document or action is appropriate to carry out the intent and purposes of these resolutions and, in the case of a document, that such Director or officer has approved the terms of the document.

This written consent may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signed copy of this consent, delivered by facsimile, or by e-mail attachment in PDF, JPEG or similar format, or by DocuSign or similar electronic signature technology, shall for all purposes be treated as if it were delivered containing an original manual signature of the individual whose signature appears in such transmission.

[SIGNATURE PAGE FOLLOWS]

PROPOSED

The undersigned, being all of the members of the KPI Board, hereby adopt and consent to the foregoing resolutions without a meeting pursuant to the authority set forth in section 604(a) of the Bylaws of the Corporation by their execution of this instrument on the respective dates set forth below, but effective as of the date first set forth above.

RICK KRATT

Date: June ____, 2023

ROBB SEIBLY

Date: June ____, 2023

DUSTIN CONTRERAS

Date: June ____, 2023

PROPOSED

EXHIBIT A

KCERA Resolution No. 2023-02

PROPOSED