

Kennedy-Wilson Holdings, Inc.  
Form S-1/A  
June 08, 2010  
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As filed with the Securities and Exchange Commission on June 8, 2010

Registration No. 333-164926

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**PRE-EFFECTIVE AMENDMENT NO. 2**  
**ON**  
**FORM S-1**  
**TO**  
**FORM S-3**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

**Kennedy-Wilson Holdings, Inc.**

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(Exact name of registrant as specified in its charter)

<b>Delaware</b> (State or other jurisdiction of incorporation or organization)	<b>6531</b> (Primary Standard Industrial Classification Code Number) <b>9701 Wilshire Blvd., Suite 700</b> <b>Beverly Hills, CA 90212</b> <b>(310) 887-6400</b>	<b>20-4743916</b> (I.R.S. Employer Identification Number)
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(Address, including zip code, and telephone number, including  
area code, of registrant's principal executive offices)

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**Chief Executive Officer**  
**Kennedy-Wilson Holdings, Inc.**  
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(310) 282-2000

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**Approximate date of commencement of proposed sale to the public:** As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer <input type="checkbox"/>	Accelerated Filer <input checked="" type="checkbox"/>
Non-accelerated filer <input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company <input type="checkbox"/>

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<b>Title of each class of securities to be registered</b>	<b>Amount to be registered</b>	<b>Proposed maximum offering price per unit</b>	<b>Proposed maximum aggregate offering price</b>	<b>Amount of registration fee</b>
Common Stock, \$0.0001 par value per share, underlying Warrants	4,993,471(2)(1)	\$9.31(4)	\$46,489,215.01(4)	(8)
Common Stock, \$0.0001 par value per share	4,618,690(3)(1)	(7)	(7)	(8)
Warrants	4,993,471(5)	(6)	(6)	(6)

- (1) In the event of a stock split, stock dividend, anti-dilution adjustment or similar transaction involving Common Stock of the registrant, in order to prevent dilution, the number of shares registered shall be automatically increased to cover the additional shares in accordance with Rule 416(a) under the Securities Act of 1933, as amended.
- (2) Represents shares of Common Stock of the registrant underlying warrants being registered for resale that have been issued in connection with a private placement.
- (3) Represents shares of the Common Stock of the registrant being registered for resale that have been issued to the selling stockholders named in this registration statement.
- (4) Calculated pursuant to Rule 457(c) under the Securities Act of 1933, as amended, based on the average high and low price of the common stock of the registrant as reported on NYSE Amex on February 10, 2010.
- (5) Represents warrants of the registrant being registered for resale that have been issued to the selling stockholders named in this registration statement.
- (6) Pursuant to Rule 457(g) of the Securities Act of 1933, as amended, no separate registration fee is required with respect to the Warrants.
- (7) Calculated pursuant to Rule 457(c) under the Securities Act of 1933, as amended. The offering price with respect to 4,070,028 shares is based on the average high and low price of the common stock of the registrant as reported on Amex NYSE on February 10, 2010, which was \$9.31. The offering price with respect to 500,000 shares is based on the average high and low price of the common stock of the registrant as reported on the NYSE on April 16, 2010, which was \$10.93. The offering price with respect to 48,662 shares is based on the average high and low price of the common stock of the registrant as reported on the NYSE on June 4, 2010, which was \$10.95.
- (8) Previously paid.

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Pursuant to Rule 429, this registration statement is a post-effective amendment of registration statement no. 333-145110 and contains a combined prospectus that covers 10,666,529 shares of common stock registered on the registrant's registration statement no. 333-145110, as more specifically set forth below, in addition to 9,612,161 shares of common stock being registered hereunder with respect to the secondary offering made by the Selling Security Holders as set forth above, for a total of 20,278,690 shares of common stock, and 4,993,471 warrants being registered hereunder as set forth above.

Title of class of securities	Amount
<b>registered on Registration Statement No. 333-145110</b> Common Stock, \$0.0001 par value per share underlying Warrants	<b>registered on Registration Statement No. 333-145110</b> 10,666,529 shares (1)(2)
(1) In the event of a stock split, stock dividend, anti-dilution adjustment or similar transaction involving common stock of the registrant, in order to prevent dilution, the number of shares registered shall be automatically increased to cover the additional shares in accordance with Rule 416(a) under the Securities Act of 1933, as amended.	
(2) Represents shares of common stock issuable upon the exercise of warrants which were issued in our initial public offering pursuant to a prospectus dated November 14, 2007.	

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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**The information in this preliminary prospectus is not complete and may be changed. This preliminary prospectus is not an offer to sell these securities, and we are not soliciting an offer to buy these securities, in any jurisdiction where the offer or sale is not permitted.**

**Subject to Completion, Dated June 8, 2010**

**PROSPECTUS**

**20,278,690 Shares of Common Stock**

**4,993,471 Warrants**

This prospectus also relates to an offering of 4,993,471 warrants to be offered by the Selling Security Holders. In addition, this prospectus relates to an offering of 20,278,690 shares of common stock to be offered by the Selling Security Holders consisting of:

4,993,471 shares of common stock that may be sold from time to time by the Selling Security Holders, which are issuable upon the exercise of outstanding warrants issued in a private placement to our founding stockholders;

10,666,529 shares of our common stock which are issuable upon the exercise of outstanding warrants issued in our initial public offering pursuant to a prospectus dated November 14, 2007; and

4,618,690 shares of common stock that may be sold from time to time by the Selling Security Holders.

Initially, we issued 5,250,000 warrants, or the sponsor warrants, in a private placement to our founding stockholders and 25,000,000 warrants, or the public warrants, in our initial public offering. In connection with our merger with Kennedy-Wilson, Inc., on November 13, 2009, we redeemed an aggregate of 12,500,000 warrants, of which 12,243,471 were public warrants. In April 2010, we repurchased an aggregate of 2,090,000 warrants. As of May 28, 2010, there are 4,993,471 sponsor warrants and 10,666,529 public warrants outstanding.

The prices at which the Selling Security Holders may sell their securities will be determined by the prevailing market price for the securities or pursuant to privately negotiated transactions. Information regarding the Selling Security Holders and the times and manner in which they may offer and sell the securities under this prospectus is provided under **Selling Security Holders** in this prospectus.

We will not receive any of the proceeds from the sale of the securities by the Selling Security Holders under this prospectus, although we could receive up to \$62,418,387.50 upon the exercise of all of the warrants held by the Selling Security Holders and \$133,331,612.50 upon the exercise of all of the outstanding warrants issued in our initial public offering pursuant to a prospectus dated November 14, 2007. Any amounts we receive from such exercises will be used for general working capital purposes.

Our common stock trades on the New York Stock Exchange, or the NYSE, under the symbol **KW**. On May 28, 2010, the closing sale price of our common stock was \$11.03 per share.

**Investing in the common stock involves risks. See Risk Factors beginning on page 5.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The date of this prospectus is \_\_\_\_\_, 2010.

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*You should rely only on the information contained in this prospectus. We have not authorized anyone to provide you with different information. We are not making an offer of these securities in any jurisdiction where the offer is not permitted. You should not assume that the information contained in this prospectus is accurate as of any date other than the date on the front of this prospectus.*

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### SUMMARY

*This summary only highlights the more detailed information appearing elsewhere in this prospectus. As this is a summary, it does not contain all of the information that you should consider in making an investment decision. You should read this entire prospectus carefully, including the information under Risk Factors and our financial statements and the related notes included elsewhere in this prospectus, before investing. Unless otherwise specified or the context otherwise requires, references in this prospectus to we, us, our or Company refer to Kennedy-Wilson Holdings, Inc. together with its subsidiaries and affiliated entities.*

#### **Our Company**

Kennedy-Wilson Holdings, Inc. is a holding company whose primary business operations are conducted through its wholly owned subsidiary, Kennedy-Wilson, Inc.

Kennedy-Wilson Holdings, Inc. was incorporated in Delaware on July 9, 2007, under the name Prospect Acquisition Corp. as a blank check company to serve as a vehicle to effect a merger, capital stock exchange, asset acquisition or other similar business combination with an operating business in the financial services industry.

On November 13, 2009, KW Merger Sub Corp., a wholly owned subsidiary of Prospect Acquisition Corp., merged with and into Kennedy-Wilson, Inc., resulting in Kennedy-Wilson, Inc. becoming a wholly owned subsidiary of Prospect Acquisition Corp. Promptly after the merger, we changed our name to Kennedy-Wilson Holdings, Inc.

Prior to the business combination with Kennedy-Wilson, Inc., Kennedy-Wilson Holdings, Inc. had no operating business.

Founded in 1977, Kennedy-Wilson, Inc. is a diversified, international real estate company that provides investment and real estate services. Kennedy-Wilson, Inc. has grown from an auction business in one office into a vertically-integrated operating company with over 300 professionals in 21 offices throughout the U.S. and Japan. Kennedy-Wilson, Inc. is an industry leader, currently owning real estate (through its closed-end funds and joint ventures) and managing over 40 million square feet of residential, multifamily and commercial real estate, including 10,000 apartment units, throughout the U.S. and Japan.

#### **Our Industry**

Our business covers various segments that compose the real estate investments and services industries. Our operations within the real estate investments and services industries are defined by two core business units:

***KW Investments:*** We formalized our investing activities in 1999 by creating an investment arm, KW Investments. Through this investment arm, we co-invest through separate accounts and closed-end funds in the acquisition of real estate including office, multi-family, loans, retail, hotels, residential condominiums and land for development. We aim to create value with our hands-on approach and seek to harvest value through an exit strategy which is established at the time of acquisition. KW Investments consists of more than 20 investment professionals whose time is dedicated to sourcing, analyzing, executing and managing fund and joint venture investments. In June 2009, we formed KW Capital Markets with the primary function of raising private and institutional capital, assisting with investor relations, and managing other strategic initiatives.

***KW Services:*** Through our services group, KW Services, we offer a comprehensive line of real estate services for the full life-cycle of real estate ownership and investment. KW Services provides property management, auction marketing, brokerage, construction and trust management services to financial institutions, other institutional clients and individual investors. Through our extensive network of property managers and brokers, KW Services provides access to real-time market knowledge and trends, along with proprietary deal flow to KW Investments.



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### **Our Competitive Position**

We compete with a range of both local and national real estate firms, individual investors and corporations. Because of our unique combination of businesses, we compete with brokerage and property management companies as well as companies that invest in real estate and distressed notes. The brokerage and property management businesses are both highly fragmented and competitive. We compete with real estate brokerage companies on the basis of our relationship with property owners, quality of service, and commissions charged. We compete with property management and leasing firms also on the basis of our relationship with clients, the range and quality of services provided, and fees and commissions charged. Our investment operations compete to varying degrees with real estate investment partnerships and other investment companies. We compete with these other investors on the basis of our relationship with the sellers and our ability to close an investment transaction in a short time period at competitive pricing.

### **Our Strengths**

We believe we have a unique platform from which to execute our investment and services strategy due to the fact we have both an auction business and an investment platform. We believe that our platform provides significant competitive advantages over other real estate buyers operating stand-alone or investment-focused firms and may allow us to generate superior risk-adjusted returns. Our investment strategy focuses on investments that offer significant appreciation potential through intensive property management, leasing, repositioning, redevelopment and the opportunistic use of capital.

### **Our Strategy and Target Markets**

Our investment style and philosophy has been consistent over the past decade and seeks to drive the ongoing strategy for future investments. The three core fundamentals include:

Significant proprietary deal flow from an established network of industry relationships;

Focus on a systematic research process with a disciplined approach to investing; and

Superior in-house operating execution.

Our initial target submarkets, which include southern California, the San Francisco Bay area, the Puget Sound area (Greater Seattle), Hawaii and the Greater Tokyo area, share certain similar characteristics that we believe can create investment opportunities. Among these commonalities are dense populations, high barriers to entry, scarcity of land and supply constraints.

We believe that real estate is a local business. With this in mind, we intend to continue to focus on the markets that we know well through both our investment experience and service businesses. We intend to continue to target markets that we have been successful in historically due to our in-depth knowledge and relationships.

### **Our Executive Offices**

Our principal executive offices are located at 9701 Wilshire Blvd., Suite 700, Beverly Hills, CA 90212 and our telephone number is (310) 887-6400. Our website is <http://www.KennedyWilson.com>. The information contained in, or that can be accessed through, our website is not part of this prospectus.

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**THE OFFERING**

<b>Securities offered:</b>	Up to 4,993,471 warrants. In addition, up to 20,278,690 shares of common stock, par value \$0.0001, consisting of:  4,993,471 shares of common stock underlying warrants purchased by our founding stockholders in a private placement;  10,666,529 shares of common stock underlying warrants issued in our initial public offering pursuant to a prospectus dated November 14, 2007; and  4,618,690 shares of common stock purchased by our founding stockholders in a private placement and issued to certain of our officers and directors in connection with our merger with Kennedy-Wilson, Inc.
<b>NYSE symbol:</b>	KW
<b>Use of Proceeds:</b>	We will not receive any of the proceeds from the sale of the securities by the Selling Security Holders under this prospectus, although we could receive up to \$62,418,387.50 upon exercise of all of the warrants held by the Selling Security Holders and \$133,331,612.50 upon exercise of all of the outstanding warrants issued in our initial public offering pursuant to the prospectus dated November 14, 2007. Any amounts we receive from such exercised will be used for general working capital purposes.
<b>Risk Factors:</b>	An investment in our securities is subject to a number of risks. Before making an investment in our securities, you should carefully consider the risks referred to in the section entitled Risk Factors beginning on page 5 of this prospectus.

**Table of Contents****SUMMARY CONSOLIDATED FINANCIAL DATA**

The following tables set forth our summary financial data for the periods indicated. You should read this information together with Management's Discussion and Analysis of Financial Condition and Results of Operations and the financial statements and related notes included elsewhere in this prospectus. Historical financial information may not be indicative of our future performance and the results for the three months ended March 31, 2010, are not necessarily indicative of the results that may be expected for the full fiscal year.

	Year Ended December 31,			Three months ended March 31,	
	2009	2008	2007	2010	2009
<b>Statements of operations data:</b>					
Revenue	\$ 86,235,000	\$ 32,225,000	\$ 33,393,000	\$ 10,826,000	\$ 12,483,000
Merger-related operating expenses	16,120,000				
Other operating expenses	78,752,000	32,571,000	43,180,000	14,871,000	11,942,000
Equity in joint venture income (loss)	8,019,000	10,097,000	27,433,000	1,308,000	(192,000)
(Loss) income from continuing operations	(9,657,000)	667,000	9,037,000	(2,572,000)	(1,459,000)
(Loss) earnings per share from continuing operations	\$ (0.36)	\$ 0.03	\$ 0.47	\$ (0.08)	\$ (0.06)

	As of March 31, 2010
<b>Balance sheet data:</b>	
Cash and cash equivalents	\$ 43,729,000
Investments in real estate and joint ventures	239,008,000
Total assets	333,354,000
Debt	127,083,000
Kennedy-Wilson equity	175,893,000
Total equity	176,406,000

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**RISK FACTORS**

*An investment in our securities involves a high degree of risk. You should consider carefully all of the material risks described below, together with the other information contained in this prospectus before making a decision to invest in our common stock. If any of the following events occur, our business, financial condition and operating results may be materially adversely affected. In that event, the trading price of our securities could decline, and you could lose all or part of your investment. This prospectus also contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of specific factors, including the risks described below.*

**Risks Related to Our Business**

**The success of our business is significantly related to general economic conditions and the real estate industry and, accordingly, our business has been and could continue to be harmed by the economic slowdown and downturn in real estate asset values, property sales and leasing activities.**

Our business is closely tied to general economic conditions and the real estate industry. As a result, our economic performance, the value of our real estate and real estate secured notes, and our ability to implement our business strategies may be affected by changes in national and local economic conditions. The condition of the real estate markets in which we operate tends to be cyclical and related to the condition of the economy in the U.S. and Japan as a whole and to the perceptions of investors of the overall economic outlook. Rising interest rates, declining demand for real estate or periods of general economic slowdown or recession have had a direct negative impact on the real estate market in the past and a recurrence of these conditions in the U.S. or a deeper recession in Japan could result in a reduction in our revenues. In addition, the economic condition of each local market where we operate may be dependent on one or more industries. Our ability to change our portfolio promptly in response to economic or other conditions is limited. Certain significant expenditures, such as debt service costs, real estate taxes, and operating and maintenance costs are generally not reduced when market conditions are poor. These factors would impede us from responding quickly to changes in the performance of our investments and could adversely impact our business, financial condition and results of operations. We have experienced in past years, are currently experiencing, and expect in the future to be negatively impacted by, periods of economic slowdown or recession, and corresponding declines in the demand for real estate and related services, within the markets in which we operate. The current economic recession has been extraordinary for its worldwide scope, its severity and its impact on major financial institutions, among other aspects. The current recession and the downturn in the real estate market have resulted in and/or may continue to result in:

a general decline in rents due to defaulting tenants or less favorable terms for renewed or new leases;

fewer purchases and sales of properties by clients, resulting in a decrease in property management fees and brokerage commissions;

a decline in actual and projected sale prices of our properties resulting in lower returns on the properties in which we have invested;

higher interest rates, higher loan costs, less desirable loan terms and a reduction in the availability of mortgage loans and mezzanine financing, all of which could increase costs and could limit our ability to acquire additional real estate assets; and

a decrease in the availability of lines of credit and other sources of capital used to purchase real estate investments and distressed notes.

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### **We could lose part or all of our investment in the real estate properties we have interests in, which could have a material adverse effect on our financial condition and results of operations.**

There is the inherent possibility in all of our real estate investments that we could lose all or part of our investment. Real estate investments are generally illiquid, which may affect our ability to change our portfolio in response to changes in economic and other conditions. Moreover, in our joint ventures and funds that invest in real estate, we may not be able to unilaterally decide the timing of the disposition of an investment, and as a result, may not control when and whether any gain will be realized or loss avoided. The value of our investments can also be diminished by:

civil unrest, acts of war and terrorism and acts of God, including earthquakes, hurricanes and other natural disasters (which may result in uninsured or underinsured losses);

the impact of present or future legislation in the U.S. or in Japan (including environmental regulation, changes in laws concerning foreign ownership of property, changes in real estate tax rates, changes in zoning laws and laws requiring upgrades for disabled persons) and the cost of compliance with these types of legislation; and

liabilities relating to claims to the extent insurance is not available or is inadequate.

### **We may be unsuccessful in renovating the development properties we acquire resulting in investment losses.**

Part of our investment strategy is to locate and acquire real estate assets that we believe are undervalued and to improve them to increase their resale value. We face risks arising from the acquisition of properties not yet fully developed or in need of substantial renovation or redevelopment, particularly the risk that we overestimate the value of the property and the risk that the cost or time to complete the renovation or redevelopment will exceed the budgeted amount. Such delays or cost overruns may arise from:

shortages of materials or skilled labor;

a change in the scope of the original project;

the difficulty in obtaining necessary zoning, land-use, environmental, building, occupancy and other governmental permits and authorization;

the discovery of structural or other latent defects in the property once construction has commenced; and

delays in obtaining tenants.

Any failure to complete a redevelopment project in a timely manner and within budget or to sell or lease the project after completion could have a material adverse effect upon our business, results of operation and financial condition.

### **We may not recover part or any of our investment in the mezzanine loans we make or acquire due to a number of factors including the fact that such loans are subordinate to the interests of senior lenders.**

We have made and expect to continue to make or acquire mezzanine loans, which are loans that are secured by real property, but are subject to the interests of lenders who are senior to us. These mezzanine loans are considered to involve a high degree of risk compared to other types of loans secured by real property. This is due to a variety of factors, including that a foreclosure by the holder of the senior loan could result in its mezzanine loan becoming uncollectible. Accordingly, we may not recover the full amount, or any, of our investment in mezzanine loans. In

addition, mezzanine loans may have higher loan to value ratios than conventional term loans.

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**Our operations in Japan subject us to additional social, political and economic risks associated with conducting business in foreign countries, which may materially adversely affect our business and results of operations.**

One of our strategies for the future is to continue our operations and investments in Asia, particularly in Japan. In furtherance of this strategy, we expect to commit additional resources to expand our sales and marketing activities in Japan and expand our service offerings and products in selected markets throughout Asia.

If we are successful in implementing this strategy, the increased scope of our international operations may lead to more volatile financial results and difficulties in managing our businesses. This volatility and difficulty could be caused by, among other things, the following:

restrictions and problems relating to the repatriation of profits;

difficulties and costs of staffing and managing international operations;

the burden of complying with multiple and potentially conflicting laws;

laws restricting foreign companies from conducting business and unexpected changes in regulatory requirements;

the impact of different business cycles and economic instability;

political instability and civil unrest;

greater difficulty in perfecting our security interests, collecting accounts receivable, foreclosing on security and protecting our interests as a creditor in bankruptcies in certain geographic regions;

potentially adverse tax consequences;

share ownership restrictions on foreign operations;

Japanese property and income taxes, tax withholdings and tariffs; and

geographic, time zone, language and cultural differences between personnel in different areas of the world.

The current economic downturn has significantly affected countries throughout Asia, including Japan. The worldwide recession has led to falling stock prices and asset values in Asia and reduced economic growth prospects in Asia. Several property markets in Asia have been affected by real estate developments that resulted in an oversupply of completed or partially completed space. Property prices have fallen along with prices of other investments and asset values.

**Our joint venture activities subject us to unique third-party risks, including risks that other participants may become bankrupt or take action contrary to our best interests.**

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We have utilized joint ventures for large commercial investments and real estate developments. We plan to continue to acquire interests in additional limited and general partnerships, joint ventures and other enterprises, collectively referred to herein as joint ventures, formed to own or develop real property or interests in real property or note pools. It is our strategy in Japan to invest primarily through joint ventures. We have acquired and may acquire minority interests in joint ventures and we may also acquire interests as a passive investor without rights to actively participate in management of the joint ventures. Investments in joint ventures involve additional risks, including the possibility that the other participants may become bankrupt or have economic or other business interests or goals which are inconsistent with ours, that we will not have the right or power to direct the management and policies of the joint



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ventures and that other participants may take action contrary to our instructions or requests and against our policies and objectives. Should a participant in a material joint venture act contrary to our interest, it could have a material adverse effect upon our business, results of operations and financial condition. Moreover, we cannot be certain that we will continue these investments, or that we can identify suitable joint venture partners and form new joint ventures in the future.

**We purchase distressed notes that have a higher risk of default and delinquencies than newly originated loans and as a result, we may lose part or all of our investment in such notes.**

We may purchase notes that are unsecured or secured by real or personal property. These notes are generally non-performing or sub-performing, and often are in default at the time of purchase. In general, the distressed notes we acquire are highly speculative investments and have a greater than normal risk of future defaults and delinquencies as compared to newly originated loans. Returns on loan investments depend on the borrower's ability to make required payments or, in the event of default, our security interests, if any, and our ability to foreclose and liquidate whatever property may be securing the note. We cannot be sure that we will be able to collect on a defaulted loan or foreclose on security successfully or in a timely fashion. There may also be instances when we are able to acquire title to an underlying property and sell it, but not make a profit on its investment.

**We may not be successful in competing with companies in the real estate services and investment industry, some of which may have substantially greater resources than we do.**

Real estate services and investment businesses are highly competitive. Our principal competitors include both large multinational companies and national and regional firms, such as Jones Lang LaSalle, Inc. and CB Richard Ellis, Inc. Many of our competitors have greater financial resources and a broader global presence than we do. We compete with companies in the U.S., and to a limited extent, in Japan, with respect to:

selling commercial and residential properties on behalf of customers through brokerage and auction services;

leasing and property management, including construction and engineering services;

purchasing commercial and residential properties, as well as undeveloped land for our own account; and

acquiring secured and unsecured loans.

Our property management operations must compete with a growing number of national firms seeking to expand market share. There can be no assurance that we will be able to continue to compete effectively, maintain current fee levels or arrangements, continue to purchase investment property profitably or avoid increased competition.

**If we are unable to maintain or develop new client relationships, our property management business and financial condition could be substantially impaired.**

We are highly dependent on long-term client relationships and on revenues received for services under various property management agreements with third-party owners and related parties. A considerable amount of our revenues are derived from fees related to these agreements.

The majority of our property management agreements are cancelable prior to their expiration by the client for any reason on as little as 30 to 60 days' notice. These contracts also may not be renewed when their respective terms expire. If we fail to maintain existing relationships, fail to develop and maintain new client relationships or otherwise lose a substantial number of management agreements, we could experience a material adverse change in our business, financial condition and results of operations.

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### **Decreases in the performance of the properties we manage are likely to result in a decline in the amount of property management fees and leasing commissions we generate.**

Our property management fees are generally structured as a percentage of the revenues generated by the properties that we manage. Similarly, our leasing commissions typically are based on the value of the lease commitments. As a result, our revenues are adversely affected by decreases in the performance of the properties we manage and declines in rental value. Property performance will depend upon, among other things, our ability to control operating expenses (some of which are beyond our control), and financial conditions generally and in the specific areas where properties are located and the condition of the real estate market generally. If the performance or rental values of the properties we manage decline, the management fees and leasing commissions we derive from such properties could be materially adversely affected.

### **Our leasing activities are contingent upon various factors including tenant occupancy and rental rates, which if adversely affected, could cause our operating results to suffer.**

A significant portion of our property management business involves facilitating the leasing of commercial space. In certain areas of operation, there may be inadequate commercial space to meet demand and there is a potential for a decline in the number of overall lease and brokerage transactions. In areas where the supply of commercial space exceeds demand, we may not be able to renew leases or obtain new tenants for our owned and managed rental properties as leases expire. Moreover, the terms of new leases and renewals (including renovation costs or costs of concessions to tenants) may be less favorable than current leases. Our revenues may be adversely affected by the failure to promptly find tenants for substantial amounts of vacant space, if rental rates on new or renewal leases are significantly lower than expected, or if reserves for costs of re-leasing prove inadequate. We cannot be sure that we can continue to lease properties for our clients and for our own account in a profitable manner.

Our ability to lease properties also depends on:

the attractiveness of the properties to tenants;

competition from other available space;

our ability to provide for adequate maintenance and insurance and to pay increased operating expenses which may not be passed through to tenants;

the availability of capital to periodically renovate, repair and maintain the properties, as well as for other operating expenses; and

the existence of potential tenants desiring to lease the properties.

### **If we are unable to identify, acquire and integrate suitable acquisition targets, our future growth will be impeded.**

Acquisitions and expansion have been, and will continue to be, a significant component of our growth strategy for the future. While maintaining our existing business lines, we intend to continue to pursue a sustained growth strategy by increasing revenues from existing clients, expanding the breadth of our service offerings, seeking selective co-investment opportunities and pursuing strategic acquisitions.

Our ability to manage our growth will require us to effectively integrate new acquisitions into our existing operations while managing development of principal properties. We expect that significant growth in several business lines occurring simultaneously will place substantial demands on our managerial, administrative, operational and financial resources. We cannot be sure that we will be able to successfully manage all factors necessary for a successful expansion of our business. Moreover, our strategy of growth depends on the existence of and our ability to identify attractive and synergistic acquisition targets. The unavailability of suitable acquisition targets, or our inability to find them, may result in a decline in business, financial condition and results of operations.



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### **Our business is highly dependent upon the economy and real estate market in California which has recently experienced a significant downturn and is vulnerable to future decline.**

We have a high concentration of our business activities in California. Consequently, our business, results of operations and financial condition are dependent upon general trends in the California economy and real estate market. The California economy has experienced a significant downturn in the current recession and a sustained decline in the value of California real estate. Real estate market declines in California have become so severe that the market value of a number of properties securing loans has become significantly less than the outstanding balances of those loans. Real estate market declines may negatively affect our ability to sell property at a profit. In addition, California historically has been vulnerable to certain natural disaster risks, such as earthquakes, floods, wild fires and erosion-caused mudslides. The existence of adverse economic conditions or the occurrence of natural disasters in California could have a material adverse effect on our business, financial condition and results of operations.

### **Our auction services business has historically been countercyclical and, as a result, our operating results may be adversely affected when general economic conditions are improving.**

Our results of operations are dependent on the performance of our auction services group, which historically has been countercyclical. Our auction services group has recently experienced an increase in revenues due to, among other things, the substantial increase in the number of foreclosures stemming from the current economic crisis. Improvements in general economic conditions may cause auction service revenues to decrease, which could cause a material adverse impact on our results of operations.

### **We own real estate properties located in Hawaii, which subjects us to unique risks relating to, among other things, the current recession in Hawaii, Hawaii's economic dependence on fluctuating tourism, the isolated location of Hawaii and the potential for natural disasters.**

We conduct operations and own properties in Hawaii. Consequently, our business, results of operations and financial condition are dependent upon and affected by general trends in the Hawaiian economy and real estate market. The Hawaiian economy has experienced a significant downturn in the current recession and a sustained decline in the value of Hawaiian real estate. Real estate market declines may negatively affect our ability to sell property at a profit. In addition, Hawaii's economy is largely dependent upon tourism, which is subject to fluctuation and has recently experienced a significant drop. Hawaii historically has also been vulnerable to certain natural disaster risks, such as tsunamis, hurricanes and earthquakes, which could cause damage to properties owned by us or property values to decline in general. Hawaii's remote and isolated location also may create additional operational costs and expenses, which could have a material adverse impact on our financial results.

### **We have certain obligations in connection with our real estate brokerage services which could subject us to liability in the event litigation is initiated against us for an alleged breach of any such obligation.**

As a licensed real estate broker, we and our licensed employees are subject to certain statutory due diligence, disclosure and standard-of-care obligations. Failure to fulfill these obligations could subject us or our employees to litigation from parties who purchased, sold or leased properties they brokered or managed. In addition, we may become subject to claims by participants in real estate sales claiming that we did not fulfill our statutory obligations as a broker.

### **We may become subject to claims for construction defects or other similar actions in connection with**