

DUKE REALTY CORP  
Form S-3  
September 05, 2003

[QuickLinks](#) -- Click here to rapidly navigate through this document

As filed with the Securities and Exchange Commission on September 5, 2003

Registration Nos. 333- and 333-

---

---

## SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

---

### FORM S-3

REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

---

## DUKE REALTY CORPORATION

*(Exact name of registrant as specified in its charter)*

**Indiana**  
*(State or other jurisdiction of  
incorporation or organization)*

**6798**  
*(Primary Standard Industrial  
Classification Code Number)*

**35-1740409**  
*(I.R.S. employer  
identification number)*

## DUKE REALTY LIMITED PARTNERSHIP

*(Exact name of registrant as specified in its charter)*

**Indiana**  
*(State or other jurisdiction of  
incorporation or organization)*

**6798**  
*(Primary Standard Industrial  
Classification Code Number)*  
**600 East 96th Street, Suite 100  
Indianapolis, IN 46240  
(317) 808-6000**

**35-1898425**  
*(I.R.S. employer  
identification number)*

*(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)*

**Thomas L. Hefner, Chief Executive Officer**  
**Duke Realty Corporation**  
**600 East 96th Street, Suite 100**  
**Indianapolis, IN 46240**  
**(317) 808-6000**

*(Name, address, including zip code and telephone number, including area code, of agent for service)*

Copy to:

**Brad S. Markoff, Esq.**  
**Jeffrey D. Miller, Esq.**  
**Alston & Bird llp**  
**3201 Beechleaf Court, Suite 600**  
**Raleigh, North Carolina 27604**  
**Phone: (919) 862-2200**  
**Facsimile: (919) 862-2260**

**Approximate date of commencement of proposed sale to public:** From time to time after the effectiveness of the registration statement.

## Edgar Filing: DUKE REALTY CORP - Form S-3

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

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, other than securities offered only in connection with dividend or reinvestment plans, please 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 of 1933, 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 number of the earlier effective registration statement for the same offering.  \_\_\_\_\_

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.

### CALCULATION OF REGISTRATION FEE

Title of Each Class To Be Registered (1)(2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee (3)
Non-Convertible Debt Securities	\$ 500,000,000(4)	\$ 40,450(4)
Common stock, \$.01 par value Preferred Stock, \$.01 par value Depository Shares	\$ 250,000,000(4)	\$ 20,225(4)
<b>Total</b>	<b>\$ 750,000,000</b>	<b>\$ 60,675</b>

- (1) This registration statement also covers contracts that may be issued by Duke Realty Limited Partnership (the "Operating Partnership") under which the counterparty may be required to purchase Debt Securities covered hereby.
- (2) The Debt Securities will be issued by the Operating Partnership and the Common Stock, Preferred Stock and Depository Shares will be issued by Duke Realty Corporation ("Duke").
- (3) Calculated pursuant to Rule 457(c) under the Securities Act of 1933.
- (4) Pursuant to Rule 429 under the Securities Act of 1933, the prospectus included in this registration statement also relates to (a) an aggregate of \$270,000,000 of securities of the Operating Partnership previously registered pursuant to registration statement 333-100571, for which a filing fee of \$24,840 was paid at the time such registration statement was originally filed, (b) an aggregate of \$100,000,000 of securities of Duke previously registered pursuant to registration statement 333-37920, for which a filing fee of \$26,400 was paid at the time such registration statement was originally filed and (c) an aggregate of \$50,748,000 of securities of Duke previously registered pursuant to registration statement 333-49911, for which a filing fee of \$14,971 was paid at the time such registration statement was originally filed.

**Pursuant to Rule 429 under the Securities Act of 1933, the prospectus included in this registration statement is a combined prospectus and relates to registration statement no. 333-100571 previously filed by the Operating Partnership and declared effective on January 9, 2003, registration statement no. 333-37920 previously filed by the Operating Partnership and Duke and declared effective on June 13, 2000 and registration statement no. 333-49911 previously filed by Duke and declared effective on April 20, 1998. Upon effectiveness, this registration statement, which is a new registration statement, will also constitute post-effective amendment no. 1 to registration statement no. 333-100571, post-effective amendment no. 2 to registration statement no. 333-37920 and post-effective amendment no. 3 to registration statement no. 333-49911.**

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 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

PROSPECTUS

\$1,170,748,000

**DUKE REALTY CORPORATION**

**Common Stock, Preferred Stock and Depositary Shares**

**DUKE REALTY LIMITED PARTNERSHIP**

**Debt Securities**

This prospectus describes debt and equity securities that we may issue and sell at various times:

Our prospectus supplements will contain the specific terms of each issuance of debt or equity securities.

Duke Realty Corporation can issue common stock, preferred stock and depositary shares with a total offering price of up to \$400,748,000 under this prospectus.

Duke Realty Limited Partnership can issue debt securities with a total offering price of up to \$770,000,000 under this prospectus.

We may sell the debt and equity securities to or through underwriters, dealers or agents.

We may also sell debt and equity securities directly to investors.

The common shares of Duke Realty Corporation are listed on the New York Stock Exchange under the trading symbol "DRE."

---

*You should carefully read and consider the risk factors included in our periodic reports and other information that we file with the SEC before buying our securities.*

---

**Neither the SEC 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 \_\_\_\_\_, 2003.

---

**TABLE OF CONTENTS**

About this Prospectus	1
Duke and the Operating Partnership	1
Use of Proceeds	2
Ratios of Earnings to Combined Fixed Charges and Preferred Stock Dividends	2
Description of Debt Securities	3
Description of Preferred Stock	12
Description of Depositary Shares	17

Description of Common Stock	20
Federal Income Tax Considerations	23
Plan of Distribution	35
Legal Matters	35
Experts	36
Where You Can Find More Information	36

### ABOUT THIS PROSPECTUS

This prospectus is part of a shelf registration statement. Under this shelf registration statement, Duke Realty Corporation, which we refer to as "Duke," may sell any combination of common stock, preferred stock and depositary shares in one or more offerings for total proceeds of up to \$400,748,000, and Duke Realty Limited Partnership, which we refer to as the "Operating Partnership," may sell debt securities of various terms in one or more offerings for total proceeds of up to \$770,000,000. This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may add, update or change information contained in this prospectus. Before you buy any of our securities, it is important for you to consider the information contained in this prospectus and any prospectus supplement together with additional information described under the heading "Where You Can Find More Information."

### DUKE AND THE OPERATING PARTNERSHIP

Duke is a self-administered and self-managed REIT. As of June 30, 2003, we:

owned or controlled 922 industrial, office and retail properties (including 14 properties under development), consisting of more than 109 million square feet located in 13 operating platforms; and

owned or controlled more than 4,000 acres of land with an estimated future development potential of more than 63 million square feet of industrial, office and retail properties.

We provide the following services for our properties and for certain properties owned by third parties:

leasing;

management;

construction;

development; and

other tenant-related services.

We are one of the largest real estate companies in the United States with a concentration of operations in the Midwest and the Southeast. We believe that the Midwest and the Southeast complement each other and together offer relatively strong and stable economies compared to other regions of the United States and provide significant growth potential as a result of their established manufacturing base, skilled work force and moderate labor costs.

Duke directly or indirectly holds all of its interests in its properties and land and it conducts all of its operations through the Operating Partnership. Duke controls the Operating Partnership as its sole general partner and owned, as of June 30, 2003, approximately 90.2% of the Operating Partnership's common units. Holders of common units in the Operating Partnership (other than Duke) may exchange them for Duke common stock on a one for one basis. When common units are exchanged for common stock, Duke's percentage interest in the Operating

Partnership increases.

Duke is an Indiana corporation that was originally incorporated in the State of Delaware in 1985, and reincorporated in the State of Indiana in 1992. The Operating Partnership is an Indiana limited partnership that was originally formed in 1993. Our executive offices are located at 600 East 96<sup>th</sup> Street, Suite 100, Indianapolis, Indiana 46240, and our telephone number is (317) 808-6000.

1

### USE OF PROCEEDS

As required by the terms of the partnership agreement of the Operating Partnership, Duke must invest the net proceeds of any sale of common stock, preferred stock or depository shares in the Operating Partnership in exchange for additional common units or preferred units. Unless otherwise specified in the prospectus supplement, we will use the net proceeds from the sale of the securities offered by this prospectus for general corporate purposes. These purposes may include the development and acquisition of additional rental properties and other acquisition transactions, the repayment of outstanding debt and improvements to properties in our portfolio.

### RATIOS OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

The following table shows ratios of earnings to fixed charges for Duke and the Operating Partnership for the periods shown:

	<u>Company</u>	<u>Operating Partnership</u>
Six Months Ended June 30, 2003	2.13	2.17
Year Ended December 31, 2002	2.58	2.63
Year Ended December 31, 2001	2.74	2.80
Year Ended December 31, 2000	2.21	2.26
Year Ended December 31, 1999	2.47	2.51
Year Ended December 31, 1998	2.64	2.64

The following table shows ratios of earnings to combined fixed charges and preferred stock dividends for Duke and the Operating Partnership for the periods shown:

	<u>Duke</u>	<u>Operating Partnership</u>
Six Months Ended June 30, 2003	1.71	1.69
Year Ended December 31, 2002	1.92	1.88
Year Ended December 31, 2001	1.98	1.94
Year Ended December 31, 2000	1.70	1.68
Year Ended December 31, 1999	1.79	1.77
Year Ended December 31, 1998	2.05	2.05

For purposes of computing these ratios, earnings have been calculated by adding fixed charges, excluding capitalized interest, to income (loss) from continuing operations before gains or losses on property sales and (if applicable) minority interest in the Operating Partnership. Fixed charges consist (if applicable) of interest costs, whether expensed or capitalized, the interest component of rental expense and amortization of debt issuance costs.

2

## DESCRIPTION OF DEBT SECURITIES

The Operating Partnership's debt securities will be issued under an indenture between the Operating Partnership and Bank One Trust Company, N.A. (formerly known as The First National Bank of Chicago), as trustee. The trustee's office is currently located at 14 Wall Street, Eighth Floor, New York, New York 10005. We have filed the indenture with the SEC. The Trust Indenture Act of 1939 governs the indenture. The following description summarizes only the material provisions of the indenture. Accordingly, you should read the indenture because it, and not this description, defines your rights as holders of debt securities issued by the Operating Partnership.

### General

The debt securities will be direct, unsecured obligations of the Operating Partnership and will rank equally with all other unsecured and unsubordinated debt of the Operating Partnership. The debt securities will be effectively subordinated to the prior claims of each secured mortgage lender to any specific property that secures such lender's mortgage.

The Operating Partnership may issue debt securities in one or more series without limit as to aggregate principal amount. Duke can establish an issue of debt securities as sole general partner of the Operating Partnership by a resolution of its board of directors or by a supplemental indenture. All debt securities of one series need not be issued at the same time and a series may generally be reopened for additional issuances, without the consent of the holders of the debt securities of the series.

The indenture provides that there may be more than one trustee, each with respect to one or more series of debt securities. Any trustee under the indenture may resign or be replaced with a successor trustee. Except as otherwise described in this prospectus, any action by a trustee may be taken only with respect to the debt securities for which it is trustee under the indenture.

A prospectus supplement will describe the specific terms of any debt securities the Operating Partnership offers, including:

the title of the debt securities;

the aggregate principal amount of the debt securities;

the price at which the Operating Partnership will issue the debt securities;

the date on which the Operating Partnership will pay the principal of the debt securities;

the fixed or variable rate at which the debt securities will bear interest, or the method to determine the interest rate;

the basis upon which the Operating Partnership will calculate interest on the debt securities if other than a 360-day year of twelve 30-day months;

the timing and manner of making principal, interest and any premium payments on the debt securities;

the place where you may serve notices about the debt securities and the indenture, if other than as described in this prospectus;

the portion of the principal amount of the debt securities payable upon acceleration, if it is other than the full principal amount;

whether and under what conditions the Operating Partnership or the holders may redeem the debt securities;

## Edgar Filing: DUKE REALTY CORP - Form S-3

any sinking fund or similar provisions;

the currency in which the Operating Partnership will pay principal, interest and any premium payments on the debt securities, if other than U.S. dollars;

the events of default or covenants of the debt securities, if they are different from or in addition to those described in this prospectus;

whether the Operating Partnership will issue the debt securities in certificated or book-entry form;

3

---

whether the Operating Partnership will issue the debt securities in registered or bearer form and their denominations if other than \$1,000 for registered form or \$5,000 for bearer form;

whether the defeasance and covenant defeasance provisions described in this prospectus apply to the debt securities or are different in any manner;

if the debt securities are to be issued upon the exercise of debt warrants, the time, manner and place for the debt securities to be authenticated and delivered;

whether and under what circumstances the Operating Partnership will pay additional amounts on the debt securities for any tax, assessment or governmental charge and, if so, whether the Operating Partnership will have the option to redeem the debt securities instead of paying these amounts; and

any other terms of the debt securities.

Some debt securities may provide for less than the entire principal amount to be payable upon acceleration of their maturity, which we refer to as "original issue discount securities." The prospectus supplement will describe any material federal income tax, accounting and other considerations applicable to any such original issue discount securities.

### **Denominations, Interest, Registration and Transfer**

Unless otherwise described in the prospectus supplement, the Operating Partnership will issue debt securities in denominations of:

\$1,000 if they are in registered form;

\$5,000 if they are in bearer form; or

any denomination if they are in global form.

Unless otherwise specified in the prospectus supplement, the principal, interest and any premium on debt securities will be payable at the corporate trust office of the trustee. However, the Operating Partnership may choose to pay interest by check mailed to the address of the registered holder or by wire transfer of funds to the holder at an account maintained within the United States. The Operating Partnership may change the paying agent or registrar for a series of debt securities without prior notice to the holders of the debt securities, and the Operating Partnership or any of its subsidiaries may act as paying agent or registrar.

## Edgar Filing: DUKE REALTY CORP - Form S-3

If any interest date or a maturity date falls on a day that is not a business day, the required payment will be made on the next business day as if it were made on the date the payment was due and no interest will accrue on the amount so payable for the period from and after such interest payment date or such maturity date, as the case may be. For purposes of the indenture, a "business day" is any day, other than a Saturday or Sunday, on which banking institutions in New York City are open for business.

Subject to limitations imposed upon debt securities issued in book-entry form, you may exchange debt securities for different denominations of the same series or surrender debt securities for transfer at the corporate trust office of the trustee. Every debt security surrendered for transfer or exchange must be duly endorsed or accompanied by a written instrument of transfer. The Operating Partnership will not require the holder to pay any service charge for any transfer or exchange, but the trustee or the Operating Partnership may require the holder to pay any applicable tax or other governmental charge.

Neither the Operating Partnership nor the trustee is required to:

issue, transfer or exchange any debt security if the debt security may be among those selected for redemption during a 15-day period prior to the date of selection;

transfer or exchange any registered security selected for redemption in whole or in part, except, in the case of a registered security to be redeemed in part, the portion not to be redeemed;

exchange any bearer security selected for redemption except that the holder may exchange the bearer security for a registered security of that series if the holder simultaneously surrenders the registered security for redemption; or

issue, transfer or exchange any debt security that the holder surrenders for repayment.

4

---

### **Merger, Consolidation or Sale**

The Operating Partnership may consolidate with, or sell, lease or convey all or substantially all of its assets to, or merge into, any other entity, provided that:

the Operating Partnership is the continuing entity, or the successor entity formed by the transaction or which received the transfer of assets expressly assumes payment of the principal, interest and any premium on all the debt securities and the performance and observance of all of the covenants and conditions contained in the indenture;

immediately after giving effect to the transaction and treating any debt that becomes an obligation of the Operating Partnership or any subsidiary as a result of the transaction as having been incurred by the Operating Partnership or such subsidiary at the time of such transaction, no event of default under the indenture, and no event which, after notice or the lapse of time, would become an event of default, has occurred and is continuing; and

the Operating Partnership delivers to the trustee an officer's certificate and legal opinion covering these conditions.

Except for the above restrictions, the indenture does not limit the ability of the Operating Partnership to incur debt or that would afford holders of the notes protection in the event of:

a highly leveraged or similar transaction involving the Operating Partnership, the management of the Operating Partnership or Duke, or any affiliate of any such party;



a change of control; or

a reorganization, restructuring, merger or similar transaction involving the Operating Partnership that may adversely affect the holders of the debt securities.

In addition, subject to the limitations on merger, consolidation or sale described above, the Operating Partnership may enter into transactions in the future, such as the sale of all or substantially all of its assets or the merger or consolidation of the Operating Partnership, that would increase the amount of the Operating Partnership's debt or substantially reduce or eliminate its assets, which may have an adverse effect on the Operating Partnership's ability to service its debt, including the debt securities.

### Financial Covenants

**Limitations on Incurrence of Debt.** The Operating Partnership will not directly or indirectly incur any debt, other than subordinate intercompany debt, if, after giving effect to the incurrence of the additional debt, the aggregate principal amount of all outstanding debt of the Operating Partnership on a consolidated basis determined in accordance with GAAP is greater than 60% of its then-current total assets.

The Operating Partnership will also not directly or indirectly incur any debt if the ratio of consolidated income available for debt service to the amount that is expensed for interest on debt for the four most recent fiscal quarters would have been less than 1.5 to 1.0 on a pro forma basis after giving effect to the incurrence of the debt and to the application of the proceeds from the debt. In making this calculation, we assume that:

the new debt and any other debt incurred by the Operating Partnership since the first day of the four-quarter period and the application of the proceeds from the new debt, including to refinance other debt, had occurred at the beginning of the period;

the repayment or retirement of any other debt by the Operating Partnership since the first day of the four-quarter period had been repaid or retired at the beginning of the period (except that the amount of debt under any revolving credit facility is computed based upon the average daily balance of that debt during the period);

the income earned on any increase in total assets since the end of the four-quarter period had been earned, on an annualized basis, during the period; and

in the case of any acquisition or disposition by the Operating Partnership of any assets since the first day of the four-quarter period, the acquisition or disposition or any related repayment of debt had occurred as of the first day of the period with the appropriate adjustments with respect to the acquisition or disposition being included in the pro forma calculation.

5

---

In addition, the Operating Partnership will not directly or indirectly incur any secured debt if, after giving effect to the incurrence of the additional secured debt, the aggregate principal amount of all outstanding secured debt of the Operating Partnership on a consolidated basis determined in accordance with GAAP is greater than 40% of its then-current total assets.

**Maintenance of Total Unencumbered Assets.** The Operating Partnership must maintain total unencumbered assets of at least 150% of the aggregate outstanding principal amount of all outstanding unsecured debt.

### Operating Covenants

**Existence.** Except as described above under " Merger, Consolidation or Sale," the Operating Partnership must preserve and keep in full force and effect its existence, rights and franchises. However, the Operating Partnership need not preserve any right or franchise if we determine that its preservation is no longer desirable in the conduct of our business and that its loss is not materially disadvantageous to the holders of the debt securities.

**Maintenance of Properties.** The Operating Partnership must maintain all of its material properties in good condition, repair and working order, supply all properties with all necessary equipment and make all necessary repairs, renewals, replacements and improvements so that we

## Edgar Filing: DUKE REALTY CORP - Form S-3

may properly and advantageously conduct our business at all times. However, the Operating Partnership may sell its properties for value in the ordinary course of business.

**Insurance.** The Operating Partnership must keep all of its insurable properties fully insured against loss or damage with financially sound and reputable insurance companies.

**Payment of Taxes and Other Claims.** The Operating Partnership must pay, before they become delinquent:

all taxes, assessments and governmental charges; and

all lawful claims for labor, materials and supplies that, if unpaid, might by law become a lien upon any property.

However, the Operating Partnership is not required to pay any tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings.

**Provision of Financial Information.** The Operating Partnership will provide the trustee and the holders of debt securities with copies of its annual reports and quarterly reports. The Operating Partnership will continue to file timely all annual, quarterly and other periodic reports with the SEC regardless of whether or not the securities laws require the Operating Partnership to do so.

### Events of Default, Notice and Waiver

The following are events of default with respect to any series of debt securities issued under the indenture:

default for 30 days in the payment of any installment of interest on any debt security of the series;

default in the payment of the principal or any premium on any debt security of the series at its maturity;

default in making any sinking fund payment as required for any debt security of the series;

default in the performance of any other covenant contained in the indenture, other than covenants that do not apply to the series, and the default continues for 60 days after notice;

default in the payment of an aggregate principal amount exceeding \$5,000,000 of any recourse debt or any secured debt, if the default occurred after the expiration of any applicable grace period and resulted in the acceleration of the maturity of the debt, but only if such debt is not discharged or such acceleration is not rescinded or annulled;

bankruptcy, insolvency or reorganization, or court appointment of a receiver, liquidator or trustee of the Operating Partnership or any significant subsidiary or any of their respective property; and

any other event of default provided with respect to that particular series of debt securities.

If an event of default occurs and continues, the trustee or the holders of at least 25% in principal amount of the outstanding debt securities of that series may declare the principal amount of all of the debt securities of that series to be due and payable immediately. If the debt securities of that series are original issue discount securities

## Edgar Filing: DUKE REALTY CORP - Form S-3

or indexed securities, the prospectus supplement will describe the portion of the principal amount required to make the declaration. If this happens and the Operating Partnership thereafter cures the default, the holders of at least a majority in principal amount of outstanding debt securities of that series can void the acceleration.

The indenture also provides that the holders of at least a majority in principal amount of the outstanding debt securities of a series may waive any past default with respect to that series, except a default in payment or a default of a covenant or other indenture provision that can only be modified with the consent of the holder of each outstanding debt security affected.

The indenture provides that no holders of any series may institute any judicial or other proceedings with respect to the indenture or for any remedy under the indenture, except in the case of failure of the trustee to act for 60 days after it has received a written request to institute proceedings for an event of default from the holders of at least 25% in principal amount of the outstanding debt securities of that series and an offer of indemnity reasonably satisfactory to it. However, this provision will not prevent any holder from instituting suit for the enforcement of any payment due on the debt securities.

Subject to provisions in the indenture relating to its duties in case of default, the trustee is under no obligation to exercise any of its rights or powers under the indenture at the request or direction of any holders, unless the holders offer to the trustee reasonable security or indemnity. The holders of at least a majority in principal amount of the outstanding debt securities of a series (or of all debt securities then outstanding under the indenture, if applicable) have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee. However, the trustee may refuse to follow any direction that:

is in conflict with any law or the indenture;

may subject the trustee to personal liability; or

may be unduly prejudicial to the holders not joining in the direction.

The Operating Partnership must file annually with the trustee an officer's certificate certifying that no defaults have occurred under the indenture. The trustee must give notice to the holders of debt securities within 90 days of a default unless the default has been cured or waived. However, if the trustee considers it to be in the interest of the holders, the trustee may withhold notice of any default except a payment default.

### **Modification of the Indenture**

At least a majority in principal amount of all outstanding debt securities or series of outstanding debt securities affected by a modification or amendment of the indenture may modify or amend the indenture. However, holders of each of the debt securities affected by the modification must consent to modifications that have the following effects:

change the stated maturity of the principal, interest or premium on any debt security;

reduce the principal amount of, or the rate or amount of interest on, or any premium payable on redemption of, any debt security, or adversely affect any right of repayment of the holder of any debt security;

change the place or currency for payment of principal, interest or premium on any debt security;

impair the right to institute suit for the enforcement of any payment on any debt security;

reduce the percentage of outstanding debt securities of a series necessary to modify or amend the indenture, waive compliance with provisions of the indenture or defaults and consequences under the indenture or reduce the quorum or voting requirements set forth in the indenture; or

modify any of the provisions discussed above or any of the provisions relating to the waiver of past defaults or covenants, except to increase the required percentage to take the action or to provide that other provisions may not be modified or

## Edgar Filing: DUKE REALTY CORP - Form S-3

waived without the consent of the holder.

The indenture provides that the holders of at least a majority in principal amount of a series of outstanding debt securities may waive compliance by the Operating Partnership with covenants relating to that series.

7

---

The Operating Partnership and the trustee can modify the indenture without the consent of any holder for any of the following purposes:

to evidence the succession of another person to the Operating Partnership as obligor;

to add to the covenants of the Operating Partnership for the benefit of the holders or to surrender any right or power conferred upon the Operating Partnership;

to add events of default for the benefit of the holders;

to add or change any provisions of the indenture to facilitate the issuance of, or to liberalize the terms of, debt securities in bearer form, or to permit or facilitate the issuance of debt securities in uncertificated form, so long as it does not materially adversely affect the interests of any of the holders;

to change or eliminate any provision of the indenture, so long as any such change or elimination becomes effective only when there are no debt securities outstanding of any series previously created which are entitled to the benefit of those provisions;

to secure the debt securities;

to establish the form or terms of debt securities of any series;

to provide for the acceptance of appointment by a successor trustee to facilitate the administration of the trusts under the indenture by more than one trustee;

to cure any ambiguity, defect or inconsistency in the indenture, so long as the action does not materially adversely affect the interests of any of the holders; or

to supplement any of the provisions of the indenture to the extent necessary to permit or facilitate defeasance and discharge of any series, so long as the action does not materially adversely affect the interests of any of the holders.

The indenture provides that in determining whether the holders of the requisite principal amount of outstanding debt securities of a series have given any request, demand, authorization, direction, notice, consent or waiver or whether a quorum is present at a meeting of holders of debt securities:

the principal amount of an original issue discount security that is deemed to be outstanding is the amount of its principal that would be due and payable as of the date of determination upon declaration of acceleration of maturity;

the principal amount of a debt security denominated in a foreign currency that is deemed outstanding is the U.S. dollar equivalent of the principal amount, determined on the issue date for the debt security;

the principal amount of an indexed security that is deemed outstanding is the principal face amount of the indexed security at original issuance, unless otherwise provided with respect to the indexed security; and

debt securities that are directly or indirectly owned by the Operating Partnership are disregarded.

The indenture contains provisions for convening meetings of the holders of debt securities of a series. The trustee, the Operating Partnership or the holders of at least 10% in principal amount of the outstanding debt securities of a series may call a meeting. Except for any consent that the holder of each debt security affected by modifications and amendments of the indenture must give, the affirmative vote of the holders of a majority in principal amount of the outstanding debt securities of that series will be sufficient to adopt any resolution presented at a meeting at which a quorum is present. However, except as referred to above, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that may be made, given or taken by the holders of a specified percentage less than a majority in principal amount of the outstanding debt securities of a series may be adopted at a meeting at which a quorum is present only by the affirmative vote of the holders of the specified percentage. Any resolution passed or decision taken at any meeting of holders duly held in accordance with the indenture will be binding on all holders of debt securities of that series. The quorum at any meeting will be persons holding or representing a majority in principal amount of the outstanding debt securities of a series. However, if any action is to be taken at a meeting with respect to a consent or waiver that may be given by the holders of not less than a specified percentage in principal amount of the outstanding debt securities of a series, the persons holding or representing that specified percentage will constitute a quorum.

8

---

Notwithstanding the foregoing provisions, if any action is to be taken at a meeting of holders of debt securities of a series with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that the indenture expressly provides may be made, given or taken by the holders of a specified percentage in principal amount of all outstanding debt securities of the series affected thereby, or of the holders of such series and one or more additional series of debt securities:

there will be no minimum quorum requirement for such meeting; and

the principal amount of the outstanding debt securities of such series that vote in favor of such request, demand, authorization, direction, notice, consent, waiver or other action will be taken into account in determining whether such request, demand, authorization, direction, notice, consent, waiver or other action has been made, given or taken under the indenture.

#### **Discharge, Defeasance and Covenant Defeasance**

The Operating Partnership may discharge obligations to holders of any series of debt securities that have not already been delivered to the trustee for cancellation and that either have become due and payable or will become due and payable within one year or scheduled for redemption within one year by irrevocably depositing with the trustee, in trust, funds sufficient to pay the principal, interest and any premium on the series to the stated maturity or redemption date.

As long as the holders of the debt securities will not recognize any resulting income, gain or loss for federal income tax purposes, the Operating Partnership may elect either:

to defease and discharge itself from all of its obligations with respect to the debt securities, which we refer to as "defeasance"; or

to release itself from its obligations under particular sections of the indenture, which we refer to as "covenant defeasance."

In order to make a defeasance election, the Operating Partnership must irrevocably deposit with the trustee a sufficient amount to pay the principal, interest and any premium on the debt securities, and any mandatory sinking fund or analogous payments on the debt securities, on the scheduled due dates. The deposit may be either an amount in the currency in which the debt securities are payable at stated maturity, or

government obligations, or a combination of both.

If the Operating Partnership elects covenant defeasance with respect to any debt securities and the debt securities are declared due and payable because of the occurrence of any event of default still applicable to the debt securities, the amounts deposited with the trustee may not be sufficient to pay amounts due on the debt securities at the time of the acceleration resulting from the event of default. If this occurs, the Operating Partnership will remain liable to make payment of these amounts due at the time of acceleration.

The prospectus supplement may further describe any provisions permitting defeasance or covenant defeasance with respect to the debt securities of a particular series.

#### **No Conversion Rights**

The debt securities will not be convertible into or exchangeable for any capital stock of Duke or equity interests in the Operating Partnership.

#### **Book-Entry Debt Securities**

The debt securities of a series may be issued in whole or in part in the form of one or more global securities that will be deposited with a depository identified in the prospectus supplement. Global securities may be issued in either registered or bearer form and in either temporary or permanent form. Payments of principal, interest and any premium on a series of debt securities represented by a global security will be made to the depository.

We anticipate that any global securities will be deposited with The Depository Trust Company, New York, New York, that the global securities will be registered in the name of DTC's nominee, and that the following provisions will apply to the depository arrangements with respect to the global securities. The prospectus supplement will describe additional or differing terms of the depository arrangement involving any series of debt securities issued in the form of global securities.

9

---

So long as DTC or its nominee is the registered owner of a global security, DTC or its nominee will be considered the sole holder of the debt securities represented by the global security for all purposes under the indenture. Except as described below, owners of beneficial interests in a global security:

will not be entitled to have debt securities represented by the global security registered in their names;

will not receive or be entitled to receive physical delivery of debt securities in the form of a certificate; and

will not be considered the record owners or holders of debt securities under the indenture.

The laws of some states require that purchasers of securities take physical delivery of the securities in certificated form. These laws may limit the transferability of beneficial interests in a global security.

Debt securities represented by a global security will be exchangeable for debt securities in certificated form with the same terms in authorized denominations only if:

DTC notifies us that is unwilling or unable to continue as depository or if DTC ceases to be a clearing agency registered under applicable law and the Operating Partnership does not appoint a successor depository within 90 days;

an event of default under the indenture with respect to the debt securities has occurred and is continuing and the beneficial owners representing a majority in principal amount of the debt securities represented by the global security advise DTC to cease acting as depository; or

## Edgar Filing: DUKE REALTY CORP - Form S-3

the Operating Partnership determines at any time that all debt securities of a series will no longer be represented by a global security.

We obtained the following information concerning DTC and its book-entry system from sources, including DTC, that we believe to be reliable, but we take no responsibility for the accuracy of this information.

DTC will act as securities depository for the debt securities. The debt securities will be issued as fully registered securities registered in the name of Cede & Co., which is DTC's partnership nominee.

DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act. DTC holds securities that its participants deposit with DTC. DTC also facilitates the settlement among participants of securities transactions, including transfers and pledges, in deposited securities through electronic computerized book-entry changes in participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct participants of DTC include securities brokers and dealers, banks, trust companies, clearing corporations and other organizations. A number of the direct participants and the New York Stock Exchange, the American Stock Exchange, and the National Association of Securities Dealers own DTC. Access to DTC's system also is available to others, including securities brokers and dealers and banks and trust companies that clear through or maintain a custodial relationship with a direct participant, either directly or indirectly. The rules applicable to DTC and its participants are on file with the SEC.

Purchases of debt securities under the DTC system must be made by or through direct participants, which will receive a credit for the debt securities on DTC's records. The ownership interest of each beneficial owner or each actual purchaser of each debt security is to be recorded on the direct and indirect participants' records. A beneficial owner of debt securities will not receive written confirmation from DTC of its purchase, but is expected to receive a written confirmation providing details of the transaction, as well as periodic statements of its holdings, from the participant through which the beneficial owner entered into the transaction. Transfers of ownership interests in debt securities are to be accomplished by entries made on the books of participants acting on behalf of beneficial owners. Beneficial owners will not receive certificates representing their ownership interests in the debt securities, unless the use of the book-entry system for the debt securities is discontinued.

To facilitate subsequent transfers, any certificate representing debt securities that is deposited with, or on behalf of, DTC is registered in the name of its nominee, Cede & Co. The deposit of the certificate with, or on behalf of, DTC and its registration in the name of Cede & Co. effect no change in beneficial ownership. DTC has no knowledge of the actual beneficial owners of the certificate representing the debt securities. DTC's records reflect only the identity of the direct participants to whose accounts the debt securities are credited, which may or

10

---

may not be the beneficial owners. The participants will remain responsible for keeping account of their holdings on behalf of their customers.

Delivery of notices and other communications by DTC to direct participants, by direct participants to indirect participants, and by direct and indirect participants to beneficial owners, will be governed by arrangements among them and any statutory or regulatory requirements.

Neither DTC nor Cede & Co. will consent or vote with respect to the debt securities. Under its usual procedures, DTC mails an omnibus proxy to the Operating Partnership as soon as possible after the record date. The omnibus proxy assigns Cede & Co.'s consenting or voting rights to those direct participants identified on a list attached to the omnibus proxy to whose accounts the debt securities are credited on the record date.

Principal, interest and any premium payments on the debt securities will be made to DTC. DTC's practice is to credit direct participants' accounts on the payable date with respect to their holdings as shown on DTC's records unless DTC has reason to believe that it will not receive payment on the payment date. Payments by participants to beneficial owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of the participant and not of DTC, the trustee, or the paying agent, subject to any statutory or regulatory requirements. Payment of principal and interest to DTC is the responsibility of the Operating Partnership or the trustee or any paying agent. Disbursement of payments to direct participants will be the responsibility of DTC. Disbursement of payments to the beneficial owners will be the responsibility of the direct and indirect participants.

If applicable, redemption notices will be sent to Cede & Co. If less than all of the debt securities within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each direct participant in the issue to be redeemed.

## Edgar Filing: DUKE REALTY CORP - Form S-3

A beneficial owner will give notice of any option to elect to have its debt securities repaid by the Operating Partnership, through its participant, to the trustee, and will effect delivery of the debt securities by causing the direct participant to transfer the participant's interest in the global security or securities representing the debt securities, on DTC's records, to the trustee. The requirement for physical delivery of debt securities in connection with a demand for repayment will be deemed satisfied when the ownership rights in the global security or securities representing the debt securities are transferred by direct participants on DTC's records.

DTC may discontinue providing its services as securities depository with respect to a series of debt securities at any time by giving reasonable notice to the Operating Partnership or the paying agent. If a successor securities depository is not appointed, debt security certificates are required to be printed and delivered.

The Operating Partnership may decide to discontinue use of the system of book-entry transfers through DTC or a successor securities depository. In that event, debt security certificates will be printed and delivered.

Unless stated otherwise in the applicable prospectus supplement, any underwriters, dealers or agents with respect to any series of debt securities issued as global securities will be direct participants in DTC.

None of the Operating Partnership, Duke, any underwriter, dealer or agent, the trustee or any paying agent will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial interests in a global security, or for maintaining, supervising or reviewing any records relating to these beneficial interests.

Any additional or different terms of the depository arrangement with respect to a series of debt securities will be described in the prospectus supplement relating to such series.

11

---

### DESCRIPTION OF PREFERRED STOCK

#### General

Under Duke's articles of incorporation, the board of directors is authorized to issue up to 5,000,000 shares of preferred stock in one or more series and with rights, preferences, privileges and restrictions that they may fix or designate without any further vote or action by Duke's shareholders. As of June 30, 2003, the following series of preferred stock are outstanding:

7.99% Series B Cumulative Redeemable Preferred Stock, of which 265,000 shares are outstanding;

7.375% Series D Convertible Cumulative Redeemable Preferred Stock, of which 534,000 shares are outstanding;

8.25% Series E Cumulative Redeemable Preferred Stock, of which 400,000 shares are outstanding; and

8.45% Series I Cumulative Redeemable Preferred Stock, of which 300,000 shares are outstanding.

In addition, Duke sold 400,000 shares of 6.625% Series J Cumulative Redeemable Preferred Stock on August 25, 2003.

#### Terms

When Duke issues preferred stock, it will be fully paid and non-assessable. The preferred stock will not have any preemptive rights.

An amendment that will become part of Duke's articles of incorporation will reflect the specific terms of any new series of preferred stock offered. A prospectus supplement will describe these specific terms, including:



## Edgar Filing: DUKE REALTY CORP - Form S-3

the title and stated value;

the number of shares, liquidation preference and offering price;

the dividend rate, dividend periods and payment dates;

the date on which dividends begin to accrue or accumulate;

any auction and remarketing procedures;

any retirement or sinking fund requirement;

the price and the terms and conditions of any redemption right;

the price and the terms and conditions of any conversion or exchange right;

any listing on any securities exchange;

whether interests will be represented by depositary shares;

any voting rights;

the relative ranking and preferences as to dividends, liquidation, dissolution or winding up;

any limitations on issuing any series of preferred stock ranking senior to or on a parity with the series of preferred stock as to dividends, liquidation, dissolution or winding up;

any limitations on direct or beneficial ownership and restrictions on transfer; and

any other specific terms, preferences, rights, limitations or restrictions.

### **Rank**

Unless otherwise described in the prospectus supplement, the preferred stock will have the following ranking as to dividends, liquidation, dissolution or winding up:

senior to Duke's common stock and to all other equity securities ranking junior to the preferred stock;

on a parity with all equity securities issued by Duke which by their terms rank on a parity with the preferred stock; and

## Edgar Filing: DUKE REALTY CORP - Form S-3

junior to all equity securities, not including convertible debt securities, issued by Duke which by their terms rank senior to the preferred stock.

### Dividends

If declared by Duke's board of directors, preferred shareholders will be entitled to receive cash dividends at the rate set forth in the prospectus supplement. Duke will pay dividends to shareholders of record on the record date fixed by Duke's board of directors.

The prospectus supplement will specify whether dividends on any series of preferred stock are cumulative or non-cumulative. If dividends are cumulative, they will be cumulative from the date set forth in the prospectus supplement. If dividends are non-cumulative and Duke's board of directors does not declare a dividend payable on a dividend payment date, then the holders of that series will have no right to receive a dividend, and Duke will have no obligation to pay an accrued dividend later for the missed dividend period, whether or not the board of directors declares dividends on the series on any future date.

If any preferred stock is outstanding, Duke will not declare or pay dividends on, or redeem, purchase or otherwise acquire any shares of, its common stock or any capital stock ranking junior to a series of preferred stock, other than dividends paid in or conversions or exchanges for common stock or other capital stock junior to the preferred stock, unless:

if the series of preferred stock has cumulative dividends, Duke has declared and paid full cumulative dividends for all past and current dividend periods or declared and reserved funds for payment before or at the same time as the declaration and payment on the junior series; or

if the series of preferred stock does not have cumulative dividends, Duke has declared and paid full dividends for the current dividend period or declared and reserved funds for payment before or at the same time as the declaration and payment on the junior series.

When Duke does not pay dividends on shares from more than one series of preferred stock ranking in parity as to dividends in full (or has not reserved a sufficient sum for full payment), all of these dividends will be declared pro rata so that the amount of dividends declared per share in each series will in all cases bear the same ratio of accrued dividends owed. These pro rata payments per share will not include interest, nor will they include any accumulated unpaid dividends from prior periods if the dividends in question are non-cumulative.

### Redemption

If specified in the prospectus supplement, Duke will have the right to redeem all or any part of the preferred stock in each series at its option, or the preferred stock will be subject to mandatory redemption. The redemption price may be payable in cash or other property.

If the series of preferred stock is subject to mandatory redemption, the prospectus supplement will specify:

the number of shares Duke will redeem in each year;

the date after which Duke may or must commence the redemption; and

the redemption price per share, which will include all accrued and unpaid dividends other than non-cumulative dividends for prior dividend periods.

Duke will not redeem less than all of a series of preferred stock, or purchase or acquire any shares of a series of preferred stock, other than conversions or exchanges for common stock or other capital stock junior to the preferred stock, unless:

if the series of preferred stock has cumulative dividends, Duke has declared and paid full cumulative dividends for all past and current dividend periods for this series or declared and reserved funds for payment; or

## Edgar Filing: DUKE REALTY CORP - Form S-3

if the series of preferred stock does not have cumulative dividends, Duke has declared and paid full dividends for the current dividend period or declared and reserved funds for payment.

Duke may, however, purchase or acquire preferred stock of any series to preserve its status as a REIT or pursuant to an offer made on the same terms to all holders of preferred stock of that series.

13

---

If Duke redeems fewer than all outstanding shares of preferred stock of any series, it will determine the number of shares to be redeemed and whether it will redeem shares pro rata by shares held or shares requested to be redeemed or by lot in a manner determined by Duke.

Duke will mail redemption notices at least 30 days, but not more than 60 days, before the redemption date to each holder of record of a series of preferred stock to be redeemed at the address shown on the share transfer books. Each notice will state:

the redemption date;

the number of shares and series of the preferred stock to be redeemed;

the redemption price;

the place to surrender certificates for payment of the redemption price;

that dividends on the shares redeemed will cease to accrue on the redemption date; and

the date upon which any conversion rights will terminate.

If Duke redeems fewer than all outstanding shares of a series of preferred stock, the notice will also specify the number of shares Duke will redeem from each holder. If Duke gives notice of redemption and has set aside sufficient funds necessary for the redemption in trust for the benefit of stock it will redeem, then dividends will thereafter cease to accrue and all rights of the holders of the shares will terminate, except the right to receive the redemption price.

### **Liquidation Preference**

If Duke liquidates, dissolves or winds up its affairs, then holders of each series of preferred stock will receive out of Duke's legally available assets a liquidating distribution in the amount of the liquidation preference per share for that series as specified in the prospectus supplement, plus an amount equal to all dividends accrued and unpaid, but not including amounts from prior periods for non-cumulative dividends, before Duke makes any distributions to holders of its common stock or any other capital stock ranking junior to the preferred stock. Once holders of outstanding preferred stock receive their respective liquidating distributions, they will have no right or claim to any of Duke's remaining assets. In the event that Duke's assets are not sufficient to pay the full liquidating distributions to the holders of all outstanding preferred stock and all other classes or series of its capital stock ranking on a parity with its preferred stock, then Duke will distribute its assets to those holders in proportion to the full liquidating distributions to which they would otherwise have received.

After Duke has paid liquidating distributions in full to all holders of its preferred stock, it will distribute its remaining assets among holders of any other capital stock ranking junior to the preferred stock according to their respective rights and preferences and number of shares. For this purpose, a consolidation or merger of Duke with any other corporation or entity, or a sale, lease or conveyance of all or substantially all of Duke's property or business, does not constitute a liquidation, dissolution or winding up of Duke's affairs.

### **Voting Rights**

Holders of preferred stock will not have any voting rights, except as set forth below or in the prospectus supplement or as otherwise required by law.

## Edgar Filing: DUKE REALTY CORP - Form S-3

Whenever Duke has not paid dividends on any shares of preferred stock for six or more consecutive quarterly periods, the holders of such shares may vote, separately as a class with all other series of preferred stock on which Duke has not paid dividends, for the election of two additional directors of Duke. In this event, Duke's board of directors will be increased by two directors. The holders of record of at least 10% of any series of preferred stock on which Duke has not paid dividends may call a special meeting to elect these additional directors unless Duke receives the request less than 90 days before the date of the next annual or special meeting of shareholders. Whether or not the holders call a special meeting, the holders of a series of preferred stock on which Duke has not paid dividends may vote for the additional directors at the next annual meeting of shareholders and at each subsequent annual meeting until:

if the series of preferred stock has a cumulative dividend, Duke has fully paid all unpaid dividends on the shares for the past dividend periods and the then current dividend period, or Duke has declared the unpaid dividends and set apart a sufficient sum for their payment; or

14

---

if the series of preferred stock does not have a cumulative dividend, Duke has fully paid four consecutive quarterly dividends, or Duke has declared the dividends and set apart a sufficient sum for their payment.

Unless the prospectus supplement provides otherwise, Duke cannot take any of the following actions without the affirmative vote of holders of at least two-thirds of the outstanding shares of each series of preferred stock:

authorize, create or increase the authorized or issued amount of any class or series of capital stock ranking senior to the series of preferred stock as to dividends or liquidation distributions;

reclassify any authorized capital stock into shares ranking senior to the series of preferred stock as to dividends or liquidation distributions;

issue any obligation or security convertible into or evidencing the right to purchase any share ranking senior to the series of preferred stock as to dividends or liquidation distributions; or

amend, alter or repeal any provision of Duke's articles of incorporation, whether by merger, consolidation or other event, in a manner that materially and adversely affects any right, preference, privilege or voting power of the preferred stock.

For these purposes, the following events do not materially and adversely affect a series of preferred stock:

an increase in the amount of the authorized shares of preferred stock;

the creation or issuance of any other series of preferred stock; or

an increase in the amount of authorized shares of the series of preferred stock or any other series of preferred stock ranking the same as or junior to such series as to dividends and liquidation distributions.

The holders of a series of preferred stock will have no voting rights, however, if Duke redeems or calls for redemption all outstanding shares of the series and deposits sufficient funds in a trust to effect the redemption on or before the time the act occurs requiring the vote.

Under Indiana law, holders of each series of preferred stock are entitled to vote as a class upon any proposed amendment to Duke's articles of incorporation, if the amendment would:

## Edgar Filing: DUKE REALTY CORP - Form S-3

increase or decrease the aggregate number of authorized shares of such series;

effect an exchange or reclassification of all or part of the shares of the series into shares of another series;

effect an exchange or reclassification or create the right of exchange of all or part of the shares of another class or series into shares of the series;

change the designation, rights, preferences or limitations of all or a part of the shares of the series;

change the shares of all or part of the series into a different number of shares of the same series;

create a new series having rights or preferences with respect to distributions or dissolution that are prior, superior or substantially equal to the shares of the series;

increase the rights, preferences or number of authorized shares of any class or series that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior or substantially equal to the shares of the series;

limit or deny an existing preemptive right of all or part of the shares of the series; or

cancel or otherwise affect rights to distributions or dividends that have accumulated but have not yet been declared on all or part of the shares of the series.

### **Conversion Rights**

If any series of preferred stock is convertible into common stock, the prospectus supplement will describe the following terms:

the number of shares of common stock into which the shares of preferred stock are convertible;

the conversion price or manner by which Duke will calculate the conversion price;

the conversion period;

15

---

whether conversion will be at the option of the holders of the preferred stock or Duke;

any events requiring an adjustment of the conversion price; and

provisions affecting conversion in the event of the redemption of the series of preferred stock.

### **Shareholder Liability**

## Edgar Filing: DUKE REALTY CORP - Form S-3

Indiana law provides that no shareholder, including holders of preferred stock, will be personally liable for Duke's acts and obligations and that Duke's funds and property are the only recourse for its acts or obligations.

### Restrictions On Ownership

As discussed below under "Description of Common Stock Restrictions on Ownership," for Duke to qualify as a REIT, not more than 50% in value of its outstanding capital stock may be owned, directly or indirectly, by five or fewer individuals during the last half of a taxable year. As a result, Duke's articles of incorporation provide generally for certain restrictions on transfer of Duke's issued and outstanding capital stock. The amendment to Duke's articles of incorporation designating the terms of each series of preferred stock may contain additional provisions restricting the ownership and transfer of the preferred stock. The prospectus supplement will specify any additional ownership limitation relating to a series of preferred stock.

### Transfer Agent

The prospectus supplement will identify the transfer agent for the preferred stock.

16

---

## DESCRIPTION OF DEPOSITARY SHARES

### General

Duke may issue depositary shares, each of which would represent a fractional interest of a share of a particular series of preferred stock. Duke will deposit shares of preferred stock represented by depositary shares under a separate deposit agreement among Duke, a preferred stock depositary and the holders of the depositary shares. Subject to the terms of the deposit agreement, each owner of a depositary share will possess, in proportion to the fractional interest of a share of preferred stock represented by the depositary share, all the rights and preferences of the preferred stock represented by the depositary shares.

Depositary receipts will evidence the depositary shares issued pursuant to the deposit agreement. Immediately after Duke issues and delivers preferred stock to a preferred stock depositary, the preferred stock depositary will issue the depositary receipts.

### Dividends and Other Distributions

The depositary will distribute all cash dividends on the preferred stock to the record holders of the depositary shares. Holders of depositary shares generally must file proofs, certificates and other information and pay charges and expenses of the depositary in connection with distributions.

If a distribution on the preferred stock is other than in cash and it is feasible for the depositary to distribute the property it receives, the depositary will distribute the property to the record holders of the depositary shares. If such a distribution is not feasible and Duke approves, the depositary may sell the property and distribute the net proceeds from the sale to the holders of the depositary shares.

### Withdrawal of Stock

Unless Duke has previously called the underlying preferred stock for redemption or the holder of the depositary shares has converted such shares, a holder of depositary shares may surrender them at the corporate trust office of the depositary in exchange for whole or fractional shares of the underlying preferred stock together with any money or other property represented by the depositary shares. Once a holder has exchanged the depositary shares, the holder may not redeposit the preferred shares and receive depositary shares again. If a depositary receipt presented for exchange into preferred stock represents more shares of preferred stock than the number to be withdrawn, the depositary will deliver a new depositary receipt for the excess number of depositary shares.

### Redemption of Depositary Shares

## Edgar Filing: DUKE REALTY CORP - Form S-3

Whenever Duke redeems shares of preferred stock held by a depositary, the depositary will redeem the corresponding amount of depositary shares. The redemption price per depositary share will be equal to the applicable fraction of the redemption price and any other amounts payable with respect to the preferred stock. If Duke intends to redeem less than all of the underlying preferred stock, Duke and the depositary will select the depositary shares to be redeemed as nearly pro rata as practicable without creating fractional depositary shares or by any other equitable method determined by Duke that preserves its REIT status.

On the redemption date:

all dividends relating to the shares of preferred stock called for redemption will cease to accrue;

Duke and the depositary will no longer deem the depositary shares called for redemption to be outstanding; and

all rights of the holders of the depositary shares called for redemption will cease, except the right to receive any money payable upon the redemption and any money or other property to which the holders of the depositary shares are entitled upon redemption.

### **Voting of the Preferred Stock**

When a depositary receives notice regarding a meeting at which the holders of the underlying preferred stock have the right to vote, it will mail that information to the holders of the depositary shares. Each record holder of depositary shares on the record date may then instruct the depositary to exercise its voting rights for the amount of preferred stock represented by that holder's depositary shares. The depositary will vote in accordance with

17

---

these instructions. The depositary will abstain from voting to the extent it does not receive specific instructions from the holders of depositary shares. A depositary will not be responsible for any failure to carry out any instruction to vote, or for the manner or effect of any vote, as long as any action or non-action is in good faith and does not result from negligence or willful misconduct of the depositary.

### **Liquidation Preference**

In the event of Duke's liquidation, dissolution or winding up, a holder of depositary shares will receive the fraction of the liquidation preference accorded each share of underlying preferred stock represented by the depositary share.

### **Conversion of Preferred Stock**

Depositary shares will not themselves be convertible into common stock or any other securities or property of Duke. However, if the underlying preferred stock is convertible, holders of depositary shares may surrender them to the depositary with written instructions to convert the preferred stock represented by their depositary shares into whole shares of common stock, other shares of Duke's preferred stock or other shares of stock, as applicable. Upon receipt of these instructions and any amounts payable in connection with a conversion, Duke will convert the preferred stock using the same procedures as those provided for delivery of preferred stock. If a holder of depositary shares converts only part of its depositary shares, the depositary will issue a new depositary receipt for any depositary shares not converted. Duke will not issue fractional shares of common stock upon conversion. If a conversion will result in the issuance of a fractional share, Duke will pay an amount in cash equal to the value of the fractional interest based upon the closing price of the common stock on the last business day prior to the conversion.

### **Amendment and Termination of a Deposit Agreement**

Duke and the depositary may amend any form of depositary receipt evidencing depositary shares and any provision of a deposit agreement. However, unless the existing holders of at least two-thirds of the applicable depositary shares then outstanding have approved the amendment, Duke and the depositary may not make any amendment that:

would materially and adversely alter the rights of the holders of depositary shares; or

would be materially and adversely inconsistent with the rights granted to the holders of the underlying preferred stock.

Subject to exceptions in the deposit agreement and except in order to comply with the law, no amendment may impair the right of any holders of depositary shares to surrender their depositary shares with instructions to deliver the underlying preferred stock and all money and other property represented by the depositary shares. Every holder of outstanding depositary shares at the time any amendment becomes effective who continues to hold the depositary shares will be deemed to consent and agree to the amendment and to be bound by the amended deposit agreement.

Duke may terminate a deposit agreement upon not less than 30 days' prior written notice to the depositary if:

the termination is necessary to preserve Duke's REIT status; or

a majority of each series of preferred stock affected by the termination consents to the termination.

Upon a termination of a deposit agreement, holders of the depositary shares may surrender their depositary shares and receive in exchange the number of whole or fractional shares of preferred stock and any other property represented by the depositary shares. If Duke terminates a deposit agreement to preserve its status as a REIT, then Duke will use its best efforts to list the preferred stock issued upon surrender of the related depositary shares on a national securities exchange.

In addition, a deposit agreement will automatically terminate if:

Duke has redeemed all underlying preferred stock subject to the agreement;

a final distribution of the underlying preferred stock in connection with any liquidation, dissolution or winding up has occurred, and the depositary has distributed the distribution to the holders of the depositary shares; or

18

---

each share of the underlying preferred stock has been converted into other capital stock of Duke not represented by depositary shares.

### **Charges of a Preferred Stock Depositary**

Duke will pay all transfer and other taxes and governmental charges arising in connection with a deposit agreement. In addition, Duke will generally pay the fees and expenses of a depositary in connection with the performance of its duties. However, holders of depositary shares will pay the fees and expenses of a depositary for any duties requested by the holders that the deposit agreement does not expressly require the depositary to perform.

### **Resignation and Removal of Depositary**

A depositary may resign at any time by delivering to Duke notice of its election to resign. Duke may also remove a depositary at any time. Any resignation or removal will take effect upon the appointment of a successor depositary. Duke will appoint a successor depositary within 60 days after delivery of the notice of resignation or removal. The successor must be a bank or trust company with its principal office in the United States and have a combined capital and surplus of at least \$50 million.

### **Miscellaneous**

The depositary will forward to the holders of depositary shares any reports and communications from Duke with respect to the underlying preferred stock.



## Edgar Filing: DUKE REALTY CORP - Form S-3

Neither the depositary nor Duke will be liable if any law or any circumstances beyond their control prevent or delay them from performing their obligations under a deposit agreement. The obligations of Duke and a depositary under a deposit agreement will be limited to performing their duties in good faith and without negligence in regard to voting of preferred stock, gross negligence or willful misconduct. Neither Duke nor a depositary must prosecute or defend any legal proceeding with respect to any depositary shares or the underlying preferred stock unless they are furnished with satisfactory indemnity.

Duke and any depositary may rely on the written advice of counsel or accountants, or information provided by persons presenting shares of preferred stock for deposit, holders of depositary shares or other persons they believe in good faith to be competent, and on documents they believe in good faith to be genuine and signed by a proper party.

In the event a depositary receives conflicting claims, requests or instructions from Duke and any holders of depositary shares, the depositary will be entitled to act on the claims, requests or instructions received from Duke.

### **Depositary**

The prospectus supplement will identify the depositary for the depositary shares.

### **Listing of the Depositary Shares**

The applicable prospectus supplement will specify whether or not the depositary shares will be listed on any securities exchange.

19

---

## **DESCRIPTION OF COMMON STOCK**

### **General**

Duke's authorized capital stock includes 250,000,000 shares of common stock, \$.01 par value per share. Each outstanding share of common stock entitles the holder to one vote on all matters presented to shareholders for a vote. Holders of common stock have no preemptive rights.

Furthermore, holders of common stock have no right to cumulative voting for the election of directors. Consequently, because each member of Duke's board of directors serves only a one-year term, the holders of