DUKE REALTY CORP
Form 10-K
February 25, 2009
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

_X_ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2008

OR

____ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from ______ to ______.

Commission File Number: 1-9044

DUKE REALTY CORPORATION

(Exact Name of Registrant as Specified in Its Charter)

Indiana	**35-1740409**
(State or Other Jurisdiction of Incorporation or Organization)	(IRS Employer Identification Number)
600 East 96th Street, Suite 100	
Indianapolis, Indiana	**46240**
(Address of Principal Executive Offices)	(Zip Code)

Registrant s telephone number, including area code: (317) 808-6000

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class:	Name of Each Exchange on Which Registered:
Common Stock ($.01 par value)	New York Stock Exchange
Depositary Shares, each representing a 1/10 interest in a 6.625% Series J Cumulative Redeemable Preferred Share ($.01 par value)	New York Stock Exchange

Depositary Shares, each representing a 1/10 interest in a 6.5% Series K Cumulative Redeemable Preferred Share ($.01 par value) New York Stock Exchange	New York Stock Exchange
Depositary Shares, each representing a 1/10 interest in a 6.6% Series L Cumulative Redeemable Preferred Share ($.01 par value) New York Stock Exchange	New York Stock Exchange
Depositary Shares, each representing 1/10 interest in a 6.95% Series M Cumulative Redeemable Preferred Share ($.01 par value) New York Stock Exchange	New York Stock Exchange
Depositary Shares, each representing 1/10 interest in a 7.25% Series N Cumulative Redeemable Preferred Share ($.01 par value) New York Stock Exchange	New York Stock Exchange
Depositary Shares, each representing a 1/10 interest in an 8.375% Series O Cumulative Redeemable Preferred Share ($.01 par value) New York Stock Exchange	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

Indicate by check mark whether the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes X No __

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes __ No X

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes X No __

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 Regulation S-K is not contained herein, and will not be contained, to the best of Registrant s knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ( )

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 definition of large accelerated filer , accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer X Accelerated filer __ Non-accelerated filer__ Smaller reporting company__

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes __ No X

The aggregate market value of the voting shares of the registrant s outstanding common shares held by non-affiliates of the registrant is $3.3 billion based on the last reported sale price on June 30, 2008.

The number of common shares, $.01 par value outstanding as of February 19, 2009 was 148,498,027.

DOCUMENTS INCORPORATED BY REFERENCE

Certain portions of Duke Realty Corporation s Definitive Proxy Statement for its 2009 Annual Meeting of Shareholders (the Proxy Statement) to be filed pursuant to Rule 14a-6 of the Securities Exchange Act of 1934, as amended, are incorporated by reference into this Form 10-K. Other than those portions of the Proxy Statement specifically incorporated by reference pursuant to Items 10 through 14 of Part III hereof, no other portions of the Proxy Statement shall be deemed so incorporated.

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IMPORTANT INFORMATION ABOUT THIS REPORT

In this Report, the words Duke, the Company, we, us and our refer to Duke Realty Corporation and its subsidiar well as Duke Realty Corporation s predecessors and their subsidiaries. DRLP refers to our subsidiary, Duke Realty Limited Partnership.

Cautionary Notice Regarding Forward-Looking Statements

Certain statements contained in or incorporated by reference into this Annual Report on Form 10-K (this Report), including, without limitation, those related to our future operations, constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. The words believe, estimate, expect, anticipate, intend, plan, seek , may and similar statements regarding future periods are intended to identify forward-looking statements.

These forward-looking statements involve known and unknown risks, uncertainties and other important factors that could cause our actual results, performance or achievements, or industry results, to differ materially from any predictions of future results, performance or achievements that we express or imply in this Report or in the information incorporated by reference into this Report. Some of the risks, uncertainties and other important factors that may affect future results include, among others:

- Changes in general economic and business conditions, including, without limitation, the impact of the current credit crisis and economic down-turn, which are having and may continue to have a negative effect on the fundamentals of our business, the financial condition of our tenants and our lenders, and the value of our real estate assets;
- Our continued qualification as a real estate investment trust, or REIT , for U.S. federal income tax purposes;
- Heightened competition for tenants and potential decreases in property occupancy;
- Potential increases in real estate construction costs;
- Potential changes in the financial markets and interest rates;
- Volatility in our stock price and trading volume;
- Our continuing ability to raise funds on favorable terms, if at all, through the issuance of debt and equity in the capital markets, which may negatively affect both our ability to refinance our existing debt as well as our future interest expense;

Our ability to successfully identify, acquire, develop and/or manage properties on terms that are favorable to us;

Our ability to be flexible in the development and operation of joint venture properties;

Our ability to successfully dispose of properties, if at all, on terms that are favorable to us;

Inherent risks in the real estate business, including, but not limited to, tenant defaults, potential liability relating to environmental matters and liquidity of real estate investments; and

Other risks and uncertainties described herein, as well as those risks and uncertainties discussed from time to time in our other reports and other public filings with the Securities and Exchange Commission (SEC).

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Although we presently believe that the plans, expectations and results expressed in or suggested by the forward-looking statements are reasonable, all forward-looking statements are inherently subjective, uncertain and subject to change, as they involve substantial risks and uncertainties beyond our control. New factors emerge from time to time, and it is not possible for us to predict the nature, or assess the potential impact, of each new factor on our business. Given these uncertainties, we caution you not to place undue reliance on these forward-looking statements. We undertake no obligation to update or revise any of our forward-looking statements for events or circumstances that arise after the statement is made, except as otherwise may be required by law.

This list of risks and uncertainties, however, is only a summary of some of the most important factors and is not intended to be exhaustive. Additional information regarding risk factors that may affect us is included under the caption Risk Factors in this Report, and is updated by us from time to time in Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other filings that we make with the SEC.

PART I

Item 1. Business

Background

We are a self-administered and self-managed REIT, which began operations upon completion of our initial public offering in February 1986. In October 1993, we completed an additional common stock offering and acquired the rental real estate and service businesses of Duke Associates, whose operations began in 1972. As of December 31, 2008, our diversified portfolio of 738 rental properties (including nine properties comprising 1.4 million square feet under development and excluding all properties developed with the intent to sell) encompasses approximately 128.6 million rentable square feet and is leased by a diverse base of approximately 3,400 tenants whose businesses include manufacturing, retailing, wholesale trade, distribution, healthcare and professional services. We also own or control more than 7,200 acres of land available for development.

Our Service Operations provide, on a fee basis, leasing, property and asset management, development, construction, build-to-suit and other tenant-related services. We conduct our Service Operations through Duke Realty Services LLC, Duke Realty Services Limited Partnership and Duke Construction Limited Partnership. Our Rental Operations are conducted through Duke Realty Limited Partnership. See Item 7, Management s Discussion and Analysis of Financial Condition and Results of Operations and Item 8, Financial Statements and Supplementary Data for financial information related to our reportable segments.

Our headquarters and executive offices are located in Indianapolis, Indiana. In addition, we have 17 regional offices located in Alexandria, Virginia; Atlanta, Georgia; Baltimore, Maryland; Chicago, Illinois; Cincinnati, Ohio; Columbus, Ohio; Dallas, Texas; Houston, Texas; Minneapolis, Minnesota; Nashville, Tennessee; Orlando, Florida; Phoenix, Arizona; Raleigh, North Carolina; St. Louis, Missouri; Savannah, Georgia; Tampa, Florida; and Weston, Florida. We had more than 1,200 employees as of December 31, 2008.

Operational Objectives

Our primary operational objective is to maximize Funds From Operations (FFO) by (i) maintaining and increasing property occupancy and rental rates through the management of our portfolio of existing properties; (ii) selectively developing and acquiring new properties for our Rental Operations in our existing markets when economic conditions improve; (iii) using our construction expertise to act as a general contractor or construction manager in our existing markets and other domestic markets on a fee basis; and (iv) providing a full line of real estate services to our tenants and to third parties. FFO is used by industry analysts and investors as a supplemental operating performance measure of an equity REIT like Duke. FFO is calculated in accordance with the definition that was adopted by the Board of Governors of the National Association of Real Estate Investment Trusts (NAREIT). NAREIT created FFO as a supplemental measure of REIT operating performance that excludes historical cost depreciation, among other items, from

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net income determined in accordance with United States generally accepted accounting principles (GAAP). FFO is a non-GAAP financial measure. The most comparable GAAP measure is net income (loss). FFO should not be considered as a substitute for net income or any other measures derived in accordance with GAAP and may not be comparable to other similarly titled measures of other companies.

Historical cost accounting for real estate assets in accordance with GAAP implicitly assumes that the value of real estate assets diminishes predictably over time. Since real estate values instead have historically risen or fallen with market conditions, many industry analysts and investors have considered presentation of operating results for real estate companies that use historical cost accounting to be insufficient by themselves. FFO, as defined by NAREIT, represents GAAP net income (loss), excluding extraordinary items as defined under GAAP and gains or losses from sales of previously depreciated real estate assets, plus certain non-cash items such as real estate asset depreciation and amortization, and after similar adjustments for unconsolidated partnerships and joint ventures.

Management believes that the use of FFO, combined with the required primary GAAP presentations, improves the understanding of operating results of REITs among the investing public and makes comparisons of REIT operating results more meaningful. Management believes FFO is a useful measure for reviewing comparative operating and financial performance (although FFO should be reviewed in conjunction with net income which remains the primary measure of performance) because, by excluding gains or losses related to sales of previously depreciated real estate assets and excluding real estate asset depreciation and amortization, FFO provides a useful comparison of the operating performance of our real estate between periods or as compared to different companies.

As a fully integrated commercial real estate firm, we provide in-house leasing, management, development and construction services which, coupled with our significant base of commercially zoned and unencumbered land in existing business parks, should give us a competitive advantage both as a real estate operator and in future development activities.

We believe that the management of real estate opportunities and risks can be done most effectively at regional or local levels. As a result, we intend to continue our emphasis on increasing our market share and effective rents in the primary markets where we own properties. We believe that this regional focus will allow us to assess market supply and demand for real estate more effectively as well as to capitalize on the strong relationships with our tenant base. In addition, we seek to further capitalize on strong customer relationships to provide third-party construction services across the United States. As a fully integrated real estate company, we are able to arrange for or provide to our industrial, office and healthcare customers not only well located and well maintained facilities, but also additional services such as build-to-suit construction, tenant finish construction, and expansion flexibility.

All of our properties are located in areas that include competitive properties. Institutional investors, other REITs or local real estate operators generally own such properties; however, no single competitor or small group of competitors is dominant in our current markets. The supply and demand of similar available rental properties may affect the rental rates we will receive on our properties. Other competitive factors include the attractiveness of the property location, the quality of the property and tenant services provided, and the reputation of the owner and operator. In addition, our Service Operations face competition from a considerable number of other real estate companies that provide comparable services, some of whom may have greater marketing and financial resources than are available to us.

Financial Strategy

Our financing strategy is to actively manage the components of our capital structure and maintain investment grade ratings for our unsecured notes from our credit rating agencies. Additionally, to the extent that market conditions permit, we employ a capital recycling program that utilizes sales of operating real estate assets that no longer fit our strategies to generate proceeds that can be recycled into new properties that better fit our current and long-term strategies.

We also seek to maintain a balanced and flexible capital structure by: (i) extending and sequencing the maturity dates of our outstanding debt obligations; (ii) borrowing primarily at fixed rates by targeting a variable rate component of total debt less than 20%; (iii) pursuing current and future long-term debt financings; (iv) maintaining fixed charge coverage and other ratios at levels required to maintain investment grade ratings for our unsecured notes; (v) generating proceeds from the sale of non-strategic properties and (vi) issuing perpetual preferred shares for 5-10% of our total capital structure. However, given the current state of the economy and capital markets, our near term focus is on improving liquidity through capital preservation by substantially decreasing acquisitions and development, diligently managing our overhead expenses, reducing dividend payments and actively seeking new sources of capital, including secured indebtedness, to refinance and extend our existing debt maturities. In order to strengthen our capital structure, we intend to repurchase on the open market our unsecured debt maturing over the next three years, from time to time when favorable pricing is available. By focusing on strengthening our balance sheet, we expect to be positioned for future growth as the economy improves.

In addition, as discussed under Item 7, Management s Discussion and Analysis of Financial Condition and Results of Operations, we have a $1.3 billion unsecured line of credit available for our capital needs. We may, at our sole discretion, exercise an option to extend the maturity of this line of credit from January 2010 to January 2011.

Corporate Governance

Since our inception, we not only have strived to be a top-performer operationally, but also to lead in issues important to investors such as disclosure and corporate governance. Our system of governance reinforces this commitment. Summarized below are the highlights of our Corporate Governance initiatives.

Board Composition	Our Board is controlled by supermajority (92.9%) of Independent Directors , as such term is defined under the rules of the New York Stock Exchange (the NYSE) as of January 30, 2009 and thereafter
Board Committees	Our Board Committee members are all Independent Directors
Lead Director	The Chairman of our Corporate Governance Committee serves as Lead Director of the Independent Directors
Board Policies	No Shareholder Rights Plan (Poison Pill)
	Code of Conduct applies to all Directors and employees, including the Chief Executive Officer and senior financial officers; waivers require the vote of a majority of our Board of Directors or our Corporate Governance Committee.
	Effective orientation program for new Directors
	Independence of Directors is reviewed annually
	Independent Directors meet at least quarterly in executive sessions
	Independent Directors receive no compensation from Duke other than as Directors

Equity-based compensation plans require shareholder approval

Board effectiveness and performance is reviewed annually by our Corporate Governance Committee

Corporate Governance Committee conducts an annual review of the Chief Executive Officer succession plan

Independent Directors and all Board Committees may retain outside advisors, as they deem appropriate

Policy governing retirement age for Directors

Prohibition on repricing of outstanding stock options

Directors required to offer resignation upon job change

Majority voting for election of Directors

Shareholder Communications Policy

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Ownership Minimum Stock Ownership Guidelines apply to all Directors and Executive Officers
Our Code of Conduct (which applies to all Directors and employees, including the Chief Executive Officer and senior financial officers) and the Corporate Governance Guidelines are available in the investor information/ corporate governance section of our website at www.dukerealty.com. A copy of these documents may also be obtained without charge by writing to Duke Realty Corporation, 600 East 96th Street, Suite 100, Indianapolis, Indiana 46240, Attention: Investor Relations.

Additional Information

For additional information regarding our investments and operations, see Item 7, Management s Discussion and Analysis of Financial Condition and Results of Operations, and Item 8, Financial Statements and Supplementary Data. For additional information about our business segments, see Item 8, Financial Statements and Supplementary Data.

Available Information and Exchange Certifications

In addition to this Report, we file quarterly and special reports, proxy statements and other information with the SEC. All documents that are filed with the SEC are available free of charge on our corporate website, which is www.dukerealty.com. We are not incorporating the information on our website into this Report, and our website and the information appearing on our website is not included in, and is not part of, this Report. You may also read and copy any document filed at the public reference facilities of the SEC at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at (800) SEC-0330 for further information about the public reference facilities. These documents also may be accessed through the SEC s Interactive Data Electronic Application (IDEA) via the SEC s home page on the Internet (http://www.sec.gov). In addition, since some of our securities are listed on the NYSE, you may read our SEC filings at the offices of the NYSE, 20 Broad Street, New York, New York 10005.

The NYSE requires that the Chief Executive Officer of each listed company certify annually to the NYSE that he or she is not aware of any violation by the company of NYSE corporate governance listing standards as of the date of such certification. We submitted the certification of our Chairman and Chief Executive Officer, Dennis D. Oklak, with our 2008 Annual Written Affirmation to the NYSE on May 22, 2008.

We included the certification of our Principal Executive Officer and Principal Financial Officer required by Section 302 of the Sarbanes-Oxley Act of 2002 and related rules, relating to the quality of the Company s public disclosure, in this Report as Exhibit 31.1.

Item 1A. Risk Factors

In addition to the other information contained in this Report, you should carefully consider, in consultation with your legal, financial and other professional advisors, the risks described below, as well as the risk factors and uncertainties discussed in our other public filings with the SEC under the caption Risk Factors in evaluating us and our business before making a decision regarding an investment in our securities.

The risks contained in this Report are not the only risks that we face. Additional risks that are not presently known, or that we presently deem to be immaterial, also could have a material adverse effect on our financial condition, results of operations, business and prospects. The trading price of our securities could decline due to the materialization of any of these risks, and our shareholders may lose all or part of their investment.

This Report also contains forward-looking statements that may not be realized as a result of certain factors, including, but not limited to, the risks described herein and in our other public filings with the SEC. Please refer to the section in this Report entitled Cautionary Notice Regarding Forward-Looking Statements for additional information regarding forward-looking statements.

Risks Related to Our Business

Our use of debt financing could have a material adverse effect on our financial condition.

We are subject to the risks normally associated with debt financing, including the risk that our cash flow will be insufficient to meet required principal and interest payments and the risk that we will be unable to refinance our existing indebtedness, or that the terms of such refinancing will not be as favorable as the terms of existing indebtedness. Specifically, we may not be able to refinance our $1.3 billion unsecured line of credit at its maturity with the same capacity, on terms that are as favorable as the current terms, or at all. Additionally, we may not be able to refinance borrowings at our unconsolidated subsidiaries on favorable terms or at all. If our debt cannot be paid, refinanced or extended, we may not be able to make distributions to shareholders at expected levels or at all. Further, if prevailing interest rates or other factors at the time of a refinancing result in higher interest rates or other restrictive financial covenants upon the refinancing, then such refinancing would adversely affect our cash flow and funds available for operation, development and distribution.

We are also subject to financial covenants under our existing debt instruments. Should we fail to comply with the covenants in our existing debt instruments, then we would not only be in breach under the applicable debt instruments but we would also likely be unable to borrow any further amounts under our other debt instruments, which could adversely affect our ability to fund operations. We also have incurred, and may incur in the future, indebtedness that bears interest at variable rates. Thus, if market interest rates increase, so will our debt expense, which could reduce our cash flow and our ability to make distributions to shareholders.

Debt financing may not be available and equity issuances could be dilutive to our shareholders.

Our ability to execute our business strategy depends on our access to an appropriate blend of debt financing, including unsecured lines of credit and other forms of secured and unsecured debt, and equity financing, including common and preferred equity. Debt financing may not be available in sufficient amounts, on favorable terms or at all. If we issue additional equity securities, instead of debt, to manage capital needs, the interests of our existing shareholders could be diluted.

Financial and other covenants under existing credit agreements could limit our flexibility and adversely affect our financial condition.

The terms of our various credit agreements and other indebtedness require that we comply with a number of customary financial and other covenants, such as maintaining debt service coverage and leverage ratios and maintaining insurance coverage. These covenants may limit our flexibility in our operations, and breaches of these covenants could result in defaults under the instruments governing the applicable indebtedness even if we have satisfied our payment obligations. If we are unable to refinance our indebtedness at maturity or meet our payment obligations, the amount of our distributable cash flow would be adversely affected.

The current credit crisis may limit our ability to refinance our debt obligations in the short-term and may limit our access to liquidity.

Approximately 46% of our outstanding debt will mature between now and December 31, 2011. The majority of these debt maturities are comprised of $711.5 million of unsecured notes, $575.0 million of exchangeable unsecured notes, $125.0 million of corporate unsecured debt and our $1.3 billion unsecured line of credit, which has an outstanding principal balance of $474.0 million as of December 31, 2008. The unsecured line

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of credit matures in January 2010 with a one-year extension available at our option. Given the current economic conditions including, but not limited to, the credit crisis and related turmoil in the global financial markets, we may be unable to refinance these obligations on favorable terms, or at all, and could also potentially lose access to our current available liquidity under our unsecured line of credit if one or more participating lenders default on their commitments. If we are unable to refinance these obligations prior to the maturity date, then we may be forced to seek liquidity through a variety of options, including, but not limited to, the sale of properties at below market prices. In the event that we default on one or more of these obligations, it may result in additional defaults under our other obligations.

If we are unable to generate sufficient capital and liquidity, then we may be unable to pursue future development projects and other strategic initiatives.

To complete our ongoing and planned development projects, and to pursue our other strategic initiatives, we must continue to generate sufficient capital and liquidity to fund those activities. To generate that capital and liquidity, we rely upon funds from our existing operations, as well as funds that we raise through our capital raising activities. In the current economic environment, REITs like ours have faced earnings pressures that have made it more difficult to generate capital and liquidity from existing operations. In addition, due to the recent crises in the credit and capital markets, it has become increasingly difficult to raise capital and generate liquidity through the sale of equity and/or debt securities on favorable terms, if at all. In the event that we are unable to generate sufficient capital and liquidity to meet our short- and long-term needs, or if we are unable to generate capital and liquidity on terms that are favorable to us, then we may be required to curtail our proposed development projects, as well as our other strategic initiatives.

Our stock price and trading volume may be volatile, which could result in substantial losses to our shareholders.

Recently the equity securities markets have experienced a high degree of volatility, creating highly variable and unpredictable pricing of equity securities. The market price of our common and preferred stock could further change in ways that may or may not be related to our business, our industry or our operating performance and financial condition. In addition, the trading volume in our common stock may fluctuate and cause significant price variations to occur. Some of the factors that could negatively affect our share price, or result in fluctuations in the price or trading volume of our common stock, include recent uncertainty in the markets, general market and economic conditions, as well as those factors described in these Risk Factors and in other reports that we file with the SEC.

Many of these factors are beyond our control, and we cannot predict their potential effects on the price of our common and preferred stock. If the market prices of our common and preferred stock decline further, then our shareholders may be unable to resell their shares upon terms that are attractive to them. We cannot assure that the market price of our common and preferred stock will not fluctuate or decline significantly in the future. In addition, the securities markets in general may continue to experience considerable unexpected price and volume fluctuations.

We may issue debt and equity securities which are senior to our common stock and preferred stock as to distributions and in liquidation, which could negatively affect the value of our common and preferred stock.

In the future, we may attempt to increase our capital resources by entering into debt or debt-like financing that is unsecured or secured by certain of our assets, or issuing debt or equity securities, which could include issuances of secured or unsecured commercial paper, medium-term notes, senior notes, subordinated notes, preferred stock or common stock. In the event of our liquidation, our lenders and holders of our debt securities would receive a distribution of our available assets before distributions to the holders of our common stock and preferred stock. Our preferred stock has a preference over our common stock with respect to distributions and upon liquidation, which could further limit our ability to make distributions to our common shareholders. Any additional preferred stock that we may issue may have a preference over our common stock and existing series of preferred stock with respect to distributions and upon liquidation.

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Our leverage strategy may require us to seek substantial amounts of commercial credit and issue debt securities to manage our capital needs. Because our decision to incur debt and issue securities in our future offerings will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings and debt financings. Further, market conditions could require us to accept less favorable terms for the issuance of our securities in the future. Thus, our shareholders will bear the risk of our future offerings reducing the value of their shares of common stock and diluting their interest in us. We may change this leverage strategy from time to time without shareholder approval.

Our use of joint ventures may limit our flexibility with jointly owned investments.

We currently have joint ventures that are not consolidated with our financial statements. We may develop and acquire properties in joint ventures with other persons or entities when circumstances warrant the use of these structures. Our participation in joint ventures is subject to the risks that:

- We could become engaged in a dispute with any of our joint venture partners that might affect our ability to develop or operate a property;
- Our joint venture partners may have different objectives than we have regarding the appropriate timing and terms of any sale or refinancing of properties;
- Our joint venture partners may have competing interests in our markets that could create conflict of interest issues; and
- Maturities of debt encumbering our jointly owned investments may not be able to be refinanced at all or on terms that are as favorable as the current terms.

The SEC has proposed changes to the eligibility requirements for Form S-3 that could prevent us from issuing debt securities on our automatic shelf registration statement.

From time to time, DRLP issues debt securities pursuant to an automatic shelf registration statement on Form S-3. On July 1, 2008, the SEC issued a proposed rule that would revise the transaction eligibility criteria for registering primary offerings of non-convertible securities (like DRLP s debt securities) on Forms S-3. As proposed, the instructions to these forms would no longer refer to security ratings by a nationally recognized statistical rating organization as a transaction requirement to permit issuers to register primary offerings of non-convertible securities for cash. Instead, the Form S-3 would be available to register primary offerings of non-convertible securities if the issuer has issued (as of a date within 60 days prior to the filing of the registration statement) for cash more than $1 billion in non-convertible securities, other than common equity, through registered primary offerings over the prior three years.

Currently, DRLP relies on the eligibility standard for offerings of investment grade rated non-convertible debt securities in order to offer securities pursuant to an automatic shelf registration statement on Form S-3. The SEC s proposal would effectively eliminate this eligibility standard. Although we currently satisfy the SEC s proposed eligibility criteria (namely, having issued more than $1 billion of non-convertible debt in registered offerings over the most recent three years), it is possible that we may not meet this test in the future, in which case DRLP would not be eligible to issue securities on Form S-3. If DRLP is unable to issue securities of Form S-3, then, to the extent it seeks to issue registered securities, it would be required to use Form S-1, which would impede our ability to launch and price public offerings of debt securities on short notice with the speed and efficiency necessary to take advantage of favorable market conditions.

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Risks Related to the Real Estate Industry

Our net earnings available for investment or distribution to shareholders could decrease as a result of factors related to the ownership and operation of commercial real estate that are outside of our control.

Our business is subject to the risks incident to the ownership and operation of commercial real estate, many of which involve circumstances not within our control. Such risks include the following:

- Changes in the general economic climate;
- The availability of capital on favorable terms, or at all;
- Increases in interest rates;
- Local conditions such as oversupply of property or a reduction in demand;
- Competition for tenants;
- Changes in market rental rates;
- Oversupply or reduced demand for space in the areas where our properties are located;
- Delay or inability to collect rent from tenants who are bankrupt, insolvent or otherwise unwilling or unable to pay;
- Difficulty in leasing or re-leasing space quickly or on favorable terms;
- Costs associated with periodically renovating, repairing and reletting rental space;
- Our ability to provide adequate maintenance and insurance on our properties;
- Our ability to control variable operating costs;
- Changes in government regulations; and

Potential liability under, and changes in, environmental, zoning, tax and other laws.

Further, a significant portion of our costs, such as real estate taxes, insurance and maintenance costs and our debt service payments, are generally not reduced when circumstances cause a decrease in cash flow from our properties. Any one or more of these factors could result in a reduction in our net earnings available for investment or distribution to shareholders.

Many real estate costs are fixed, even if income from properties decreases.

Our financial results depend on leasing space in our real estate to tenants on terms favorable to us. Our income and funds available for distribution to our shareholders will decrease if a significant number of our tenants cannot meet their lease obligations to us or we are unable to lease properties on favorable terms. In addition, if a tenant does not pay its rent, we may not be able to enforce our rights as landlord without delays and we may incur substantial legal costs. Costs associated with real estate investment, such as real estate taxes and maintenance costs, generally are not reduced when circumstances cause a reduction in income from the investment.

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Our real estate development activities are subject to risks particular to development.

Although we have significantly reduced our development activities, we may still pursue select opportunities and have previously started developments that are currently in various stages of completion. These development activities generally require various government and other approvals, which we may not receive. In addition, we also are subject to the following risks associated with development activities:

- Unsuccessful development opportunities could result in direct expenses to us;
- Construction costs of a project may exceed original estimates, possibly making the project less profitable than originally estimated, or possibly unprofitable;
- Time required to complete the construction of a project or to lease up the completed project may be greater than originally anticipated, thereby adversely affecting our cash flow and liquidity;
- Occupancy rates and rents of a completed project may not be sufficient to make the project profitable;
- Our ability to dispose of properties developed with the intent to sell or other properties we identify for sale in our capital recycling program could be impacted by the ability of prospective buyers to obtain financing given the current state of the credit markets; and
- Favorable sources to fund our development activities may not be available.

We may be unsuccessful in operating completed real estate projects.

We face the risk that the real estate projects we develop or acquire will not perform in accordance with our expectations. This risk exists because of factors such as the following:

- Prices paid for acquired facilities are based upon a series of market judgments; and
- Costs of any improvements required to bring an acquired facility up to standards to establish the market position intended for that facility might exceed budgeted costs.

Further, we can give no assurance that acquisition targets meeting our guidelines for quality and yield will be available, should we seek them.

We are exposed to the risks of defaults by tenants.

Any of our tenants may experience a downturn in their businesses that may weaken their financial condition. Additionally, the recent disruption in the credit markets and the U.S. economy generally may lead to additional financial difficulties and workforce reductions among our tenants. In the event of default or the insolvency of a significant number of our tenants, we may experience a substantial loss of rental revenue and/or delays in collecting rent and incur substantial costs in enforcing our rights as landlord. If a tenant files for bankruptcy protection, a court could allow the tenant to reject and terminate its lease with us. Our income and distributable cash flow would be adversely affected if a significant number of our tenants became unable to meet their obligations to us, became insolvent or declared bankruptcy.

We may be unable to renew leases or relet space.

When our tenants decide not to renew their leases upon their expiration, we may not be able to relet the space. Even if our tenants do renew or we are able to relet the space, the terms of renewal or reletting (including the cost of renovations, if necessary) may be less favorable than current lease terms. These risks may be further intensified as the result of the disruption in the U.S. economy. If we are unable to promptly renew the leases or relet the space, or if the rental rates upon such renewal or reletting are significantly lower than current rates, then our income and distributable cash flow would be adversely affected, especially if we were unable to lease a significant amount of the space vacated by tenants in our properties.

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Our insurance coverage on our properties may be inadequate.

We maintain comprehensive insurance on each of our facilities, including property, liability, fire, flood and extended coverage. We believe this coverage is of the type and amount customarily obtained for real property. However, there are certain types of losses, generally of a catastrophic nature, such as earthquakes, hurricanes and floods or acts of war or terrorism that may be uninsurable or not economically insurable. We use our discretion when determining amounts, coverage limits and deductibles for insurance. These terms are determined based on retaining an acceptable level of risk at a reasonable cost. This may result in insurance coverage that in the event of a substantial loss would not be sufficient to pay the full current market value or current replacement cost of our lost investment. Inflation, changes in building codes and ordinances, environmental considerations and other factors also may make it unfeasible to use insurance proceeds to replace a facility after it has been damaged or destroyed. Under such circumstances, the insurance proceeds we receive may not be adequate to restore our economic position in a property. If an insured loss occurred, we could lose both our investment in and anticipated profits and cash flow from a property, and we would continue to be obligated on any mortgage indebtedness or other obligations related to the property. Although we believe our insurance is with highly rated providers, we are also subject to the risk that such providers may be unwilling or unable to pay our claims when made.

Acquired properties may expose us to unknown liability.

From time to time, we may acquire properties subject to liabilities and without any recourse, or with only limited recourse, with respect to unknown liabilities. As a result, if a liability were asserted against us based upon ownership of those properties, we might have to pay substantial sums to settle or contest it, which could adversely affect our results of operations and cash flow. Unknown liabilities with respect to acquired properties might include:

- liabilities for clean-up of undisclosed environmental contamination;
- claims by tenants, vendors or other persons against the former owners of the properties;
- liabilities incurred in the ordinary course of business; and
- claims for indemnification by general partners, directors, officers and others indemnified by the former owners of the properties.

We could be exposed to significant environmental liabilities as a result of conditions of which we currently are not aware.

As an owner and operator of real property, we may be liable under various federal, state and local laws for the costs of removal or remediation of certain hazardous substances released on or in our property. Such laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the release of the hazardous substances. In addition, we could have greater difficulty in selling real estate on which hazardous substances were present or in obtaining borrowings using such real estate as collateral. It is our general policy to have Phase I environmental audits performed for all of our properties and land by qualified environmental consultants. These Phase I environmental audits have not revealed any environmental liability that would have a material adverse effect on our business. However, a Phase I environmental audit does not involve invasive procedures such as soil sampling or ground water analysis, and we cannot be sure that the Phase I environmental audits did not fail to reveal a significant environmental liability or that a prior owner did not create a material environmental condition on our properties or land which has not yet been discovered. We could also incur environmental liability as a result of future uses or conditions of such real estate or changes in applicable environmental laws.

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Risks Related to Our Organization and Structure

If we were to cease to qualify as a REIT, we and our shareholders would lose significant tax benefits.

We intend to continue to operate so as to qualify as a REIT under the Internal Revenue Code of 1986, as amended (the Code). Qualification as a REIT provides significant tax advantages to us and our shareholders. However, in order for us to continue to qualify as a REIT, we must satisfy numerous requirements established under highly technical and complex Code provisions for which there are only limited judicial and administrative interpretations. Satisfaction of these requirements also depends on various factual circumstances not entirely within our control. The fact that we hold our assets through an operating partnership and its subsidiaries further complicates the application of the REIT requirements. Even a technical or inadvertent mistake could jeopardize our REIT status. Although we believe that we can continue to operate so as to qualify as a REIT, we cannot offer any assurance that we will continue to do so or that legislation, new regulations, administrative interpretations or court decisions will not significantly change the qualification requirements or the federal income tax consequences of qualification. If we were to fail to qualify as a REIT in any taxable year, it would have the following effects:

- We would not be allowed a deduction for distributions to shareholders and would be subject to federal income tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates;

- Unless we were entitled to relief under certain statutory provisions, we would be disqualified from treatment as a REIT for the four taxable years following the year during which we ceased to qualify as a REIT;

- Our net earnings available for investment or distribution to our shareholders would decrease due to the additional tax liability for the year or years involved; and

- We would no longer be required to make any distributions to shareholders in order to qualify as a REIT.

As such, failure to qualify as a REIT would likely have a significant adverse effect on the value of our securities.

REIT distribution requirements limit the amount of cash we have available for other business purposes, including amounts that we need to fund our future capital needs.

To maintain our qualification as a REIT under the Code, we must annually distribute to our shareholders at least 90% of our ordinary taxable income, excluding net capital gains. We intend to continue to make distributions to our shareholders to comply with the 90% distribution requirement. However, this requirement limits our ability to accumulate capital for use for other business purposes. If we do not have sufficient cash or other liquid assets to meet the distribution requirements, we may have to borrow funds or sell properties on adverse terms in order to meet the distribution requirements. If we fail to make a required distribution, we would cease to qualify as a REIT.

U.S. federal income tax developments could affect the desirability of investing in us for individual taxpayers.

In May 2003, federal legislation was enacted that reduced the maximum tax rate for dividends payable to individual taxpayers generally from 38.6% to 15% (from January 1, 2003 through 2008). However, dividends payable by REITs are not eligible for this treatment, except in limited circumstances. Although this legislation did not have a direct adverse effect on the taxation of REITs or dividends paid by REITs, the more favorable treatment for non-REIT dividends could cause individual investors to consider investments in non-REIT corporations as more attractive relative to an investment in us as a REIT.

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U.S. federal income tax treatment of REITs and investments in REITs may change, which may result in the loss of our tax benefits of operating as a REIT.

The present U.S. federal income tax treatment of a REIT and an investment in a REIT may be modified by legislative, judicial or administrative action at any time. Revisions in U.S. federal income tax laws and interpretations of these laws could adversely affect us and the tax consequences of an investment in our common shares.

We are subject to certain provisions that could discourage change-of-control transactions, which may reduce the likelihood of our shareholders receiving a control premium for their shares.

Indiana anti-takeover legislation and certain provisions in our governing documents, as we discuss below, may discourage potential acquirers from pursuing a change-of-control transaction with us. As a result, our shareholders may be less likely to receive a control premium for their shares.

Unissued Preferred Stock. Our charter permits our board of directors to classify unissued preferred stock by setting the rights and preferences of the shares at the time of issuance. This power enables our board to adopt a shareholder rights plan, also known as a poison pill. Although we have repealed our previously existing poison pill and our current board of directors has adopted a policy not to issue preferred stock as an anti-takeover measure, our board can change this policy at any time. The adoption of a poison pill would discourage a potential bidder from acquiring a significant position in the company without the approval of our board.

Business-Combination Provisions of Indiana Law. We have not opted out of the business-combination provisions of the Indiana Business Corporation Law. As a result, potential bidders may have to negotiate with our board of directors before acquiring 10% of our stock. Without securing board approval of the proposed business combination before crossing the 10% ownership threshold, a bidder would not be permitted to complete a business combination for five years after becoming a 10% shareholder. Even after the five-year period, a business combination with the significant shareholder would require a fair price as defined in the Indiana Business Corporation Law or the approval of a majority of the disinterested shareholders.

Control-Share-Acquisition Provisions of Indiana Law. We have not opted out of the provisions of the Indiana Business Corporation Law regarding acquisitions of control shares. Therefore, those who acquire a significant block (at least 20%) of our shares may only vote a portion of their shares unless our other shareholders vote to accord full voting rights to the acquiring person. Moreover, if the other shareholders vote to give full voting rights with respect to the control shares and the acquiring person has acquired a majority of our outstanding shares, the other shareholders would be entitled to special dissenters rights.

Supermajority Voting Provisions. Our charter prohibits business combinations or significant disposition transactions with a holder of 10% of our shares unless:

- The holders of 80% of our outstanding shares of capital stock approve the transaction;

- The transaction has been approved by three-fourths of those directors who served on the board before the shareholder became a 10% owner; or

The significant shareholder complies with the "fair price" provisions of our charter.

Among the transactions with large shareholders requiring the supermajority shareholder approval are dispositions of assets with a value greater than or equal to $1,000,000 and business combinations.

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Operating Partnership Provisions. The limited partnership agreement of DRLP contains provisions that could discourage change-of-control transactions, including a requirement that holders of at least 90% of the outstanding partnership units held by us and other unit holders approve:

- Any voluntary sale, exchange, merger, consolidation or other disposition of all or substantially all of the assets of DRLP in one or more transactions other than a disposition occurring upon a financing or refinancing of DRLP;

- Our merger, consolidation or other business combination with another entity unless after the transaction substantially all of the assets of the surviving entity are contributed to DRLP in exchange for units;

- Our transfer of our interests in DRLP other than to one of our wholly owned subsidiaries; and

- Any reclassification or recapitalization or change of outstanding shares of our common stock other than certain changes in par value, stock splits, stock dividends or combinations.

We are dependent on key personnel.

Our executive officers and other senior officers have a significant role in the success of our Company. Our ability to retain our management group or to attract suitable replacements should any members of the management group leave our Company is dependent on the competitive nature of the employment market. The loss of services from key members of the management group or a limitation in their availability could adversely impact our financial condition and cash flow. Further, such a loss could be negatively perceived in the capital markets.

Item 1B. Unresolved Staff Comments

We have no unresolved comments with the SEC staff regarding our periodic or current reports under the Exchange Act.

Item 2. Properties

Product Review

As of December 31, 2008, we own interests in a diversified portfolio of 738 commercial properties encompassing approximately 128.6 million net rentable square feet (including nine properties comprising more than 1.4 million square feet under development and excluding all properties developed with the intent to sell) and more than 7,200 acres of land for future development.

Industrial Properties: We own interests in 421 industrial properties encompassing approximately 92.1 million square feet (72% of total square feet) more specifically described as follows:

Bulk Warehouses Industrial warehouse/distribution buildings with clear ceiling heights of 20 feet or more. We own 369 buildings totaling approximately 88.7 million square feet of such properties.

Service Center Properties Also known as flex buildings or light industrial, this product type has 12-18 foot clear ceiling heights and a combination of drive-up and dock-height loading access. We own 52 buildings totaling more than 3.4 million square feet of such properties.

Office Properties: We own interests in 295 office buildings totaling more than 34.2 million square feet (26% of total square feet). These properties include primarily suburban office properties.

Other Properties: We own interests in 22 healthcare and retail buildings totaling more than 2.2 million square feet (2% of total square feet).

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Land: We own or control more than 7,200 acres of land located primarily in existing busine