

CAPITAL PROPERTIES INC /RI/

Form 10-Q

November 10, 2009

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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549  
FORM 10-Q**

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

**For the quarterly period ended September 30, 2009**

**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 001-08499**

**CAPITAL PROPERTIES, INC.**

(Exact name of registrant as specified in its charter)

**Rhode Island**  
(State or other jurisdiction of  
incorporation or organization)

**05-0386287**  
(IRS Employer  
Identification No.)

**100 Dexter Road**  
**East Providence, Rhode Island 02914**  
(Address of principal executive offices) (Zip Code)  
**(401) 435-7171**  
(Registrant's telephone number, including area code)

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

Title of each class  
**Class A Common Stock, \$.01 par value**

Name of each exchange on which registered  
**OTCQX (Pink Sheets)**

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

NONE

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the 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  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company.

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company   
(Do not check if a 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

As of September 30, 2009, the Company had 3,651,731 shares of Class A Common Stock and 2,948,181 shares of Class B Common Stock outstanding.

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**CAPITAL PROPERTIES, INC.**  
**FORM 10-Q**  
**FOR THE QUARTER ENDED SEPTEMBER 30, 2009**  
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**Table of Contents****PART I****Item 1. Consolidated Financial Statements  
CAPITAL PROPERTIES, INC. AND SUBSIDIARIES  
CONSOLIDATED BALANCE SHEETS**

|   | September 30,<br>2009<br>(unaudited) | December 31,<br>2008 |
|---|--------------------------------------|----------------------|
| <b>ASSETS</b>   |                                      |                      |
| Properties and equipment (net of accumulated depreciation)  | \$ 21,378,000                        | \$ 20,447,000        |
| Cash and cash equivalents   | 2,688,000                            | 3,395,000            |
| Prepaid and other   | 552,000                              | 485,000              |
|   | \$ 24,618,000                        | \$ 24,327,000        |
| <b>LIABILITIES AND SHAREHOLDERS EQUITY</b>  |                                      |                      |
| Liabilities:  |                                      |                      |
| Accounts payable and accrued expenses:  |                                      |                      |
| Property taxes  | \$ 245,000                           | \$ 238,000           |
| Environmental remediation   | 81,000                               | 81,000               |
| Other   | 531,000                              | 416,000              |
| Deferred leasing revenues   | 520,000                              | 520,000              |
| Income taxes:   |                                      |                      |
| Current   |                                      | 346,000              |
| Deferred, net   | 5,299,000                            | 5,269,000            |
|   | 6,676,000                            | 6,870,000            |
| Commitment (Note 4)   |                                      |                      |
| Shareholders' equity (Note 8):  |                                      |                      |
| Class A common stock, \$.01 par; authorized 10,000,000 shares; issued and outstanding, 3,651,731 shares at September 30, 2009 and 3,299,956 shares at December 31, 2008 | 37,000                               | 33,000               |
| Class B common stock, \$.01 par; authorized 3,500,000 shares; issued and outstanding, 2,948,181 shares at September 30, 2009 and 3,299,956 shares at December 31, 2008  | 29,000                               | 33,000               |
| Excess stock, \$.01 par; authorized 1,000,000 shares; none issued and outstanding   |                                      |                      |
| Capital in excess of par  | 11,762,000                           | 11,762,000           |
| Retained earnings   | 6,114,000                            | 5,629,000            |
|   | 17,942,000                           | 17,457,000           |
|   | \$ 24,618,000                        | \$ 24,327,000        |

See notes to consolidated financial statements.

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CONSOLIDATED STATEMENTS OF INCOME  
(Unaudited)**

|   | Three Months Ended<br>September 30 |            | Nine Months Ended<br>September 30 |              |
|---|------------------------------------|------------|-----------------------------------|--------------|
|   | 2009                               | 2008       | 2009                              | 2008         |
| Revenues and other income:  |                                    |            |                                   |              |
| Revenues:   |                                    |            |                                   |              |
| Leasing   | \$ 714,000                         | \$ 726,000 | \$ 2,188,000                      | \$ 2,254,000 |
| Petroleum storage facility  | 950,000                            | 948,000    | 2,835,000                         | 2,850,000    |
|   | 1,664,000                          | 1,674,000  | 5,023,000                         | 5,104,000    |
| Other income, interest  |                                    | 7,000      |                                   | 18,000       |
|   | 1,664,000                          | 1,681,000  | 5,023,000                         | 5,122,000    |
| Expenses:   |                                    |            |                                   |              |
| Leasing   | 266,000                            | 141,000    | 673,000                           | 510,000      |
| Petroleum storage facility  | 591,000                            | 566,000    | 1,815,000                         | 1,626,000    |
| General and administrative  | 224,000                            | 193,000    | 714,000                           | 738,000      |
|   | 1,081,000                          | 900,000    | 3,202,000                         | 2,874,000    |
| Income before income taxes  | 583,000                            | 781,000    | 1,821,000                         | 2,248,000    |
| Income tax expense:   |                                    |            |                                   |              |
| Current   | 190,000                            | 229,000    | 712,000                           | 812,000      |
| Deferred  | 52,000                             | 74,000     | 30,000                            | 93,000       |
|   | 242,000                            | 303,000    | 742,000                           | 905,000      |
| Net income  | \$ 341,000                         | \$ 478,000 | \$ 1,079,000                      | \$ 1,343,000 |
| Basic income per common share based upon<br>6,599,912 shares outstanding (Note 8)       | \$ .05                             | \$ .07     | \$ .16                            | \$ .20       |
| Dividends per share on common stock based<br>upon 6,599,912 shares outstanding (Note 8) | \$ .03                             | \$ .03     | \$ .09                            | \$ .09       |

See notes to consolidated financial statements.

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**CAPITAL PROPERTIES, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**NINE MONTHS ENDED SEPTEMBER 30, 2009 AND 2008**  
**(Unaudited)**

|   | 2009         | 2008         |
|---|--------------|--------------|
| Cash flows from operating activities:   |              |              |
| Net income  | \$ 1,079,000 | \$ 1,343,000 |
| Adjustments to reconcile net income to net cash provided by operating activities:                       |              |              |
| Depreciation  | 519,000      | 517,000      |
| Deferred income taxes   | 30,000       | 93,000       |
| Other, principally net changes in prepaids, accounts payable, accrued expenses and current income taxes | (569,000)    | (34,000)     |
| Net cash provided by operating activities   | 1,059,000    | 1,919,000    |
| Cash used in investing activities, payments for properties and equipment                                | (1,172,000)  | (272,000)    |
| Cash used in financing activities, payment of dividends   | (594,000)    | (594,000)    |
| Increase (decrease) in cash and cash equivalents  | (707,000)    | 1,053,000    |
| Cash and cash equivalents, beginning  | 3,395,000    | 1,974,000    |
| Cash and cash equivalents, ending   | \$ 2,688,000 | \$ 3,027,000 |
| Supplemental disclosures:   |              |              |
| Cash paid for income taxes  | \$ 1,138,000 | \$ 507,000   |
| Non-cash investing and financing activities:  |              |              |
| Capital expenditures financed through accounts payable  | \$ 363,000   | \$ (104,000) |
| Conversion of Class B Common Stock into Class A Common Stock  | \$ 4,000     | \$           |
| See notes to consolidated financial statements.   |              |              |



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**CAPITAL PROPERTIES, INC. AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
NINE MONTHS ENDED SEPTEMBER 30, 2009 AND 2008**

**(Unaudited)**

**1. Description of business:**

Capital Properties, Inc. and its wholly-owned subsidiaries, Tri-State Displays, Inc., Capital Terminal Company and Dunellen, LLC (collectively referred to as the Company ), operate in two segments: (1) Leasing and (2) Petroleum Storage.

The leasing segment consists of the long-term leasing of certain of its real estate interests in downtown Providence, Rhode Island (upon the commencement of which the tenants are required to construct buildings thereon, with the exception of a parking garage), the leasing of a portion of its building ( Steeple Street Building ) under short-term leasing arrangements and the leasing of locations along interstate and primary highways in Rhode Island and Massachusetts to Lamar Outdoor Advertising, LLC ( Lamar ) which has constructed outdoor advertising boards thereon. The Company anticipates that the future development of its remaining properties in and adjacent to the Capital Center area will consist primarily of long-term ground leases. Pending this development, the Company leases these parcels for public parking under short-term leasing arrangements.

The petroleum storage segment consists of operating the petroleum storage terminal (the Terminal ) and the Wilkesbarre Pier (the Pier ), collectively referred to as the Facility, located in East Providence, Rhode Island, for Global Companies, LLC ( Global ) which stores and distributes petroleum products.

The principal difference between the two segments relates to the nature of the operations. The tenants in the leasing segment incur substantially all of the development and operating costs of the assets constructed on the Company s land, including the payment of real property taxes on both the land and any improvements constructed thereon; whereas the Company is responsible for the operating and maintenance expenditures, including a portion of the real property taxes, as well as capital improvements at the Facility.

**2. Principles of consolidation and basis of presentation:**

The accompanying condensed consolidated financial statements include the accounts and transactions of the Company and its subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation.

The accompanying condensed consolidated balance sheet as of December 31, 2008, has been derived from audited financial statements and the unaudited interim condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and note disclosures normally included in annual financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted pursuant to those rules and regulations, although the Company believes that the disclosures made are adequate to make the information not misleading. It is suggested that these condensed financial statements be read in conjunction with the consolidated financial statements and the notes thereto included in the Company s latest Form 10-K. In the opinion of management, the accompanying condensed consolidated financial statements contain all adjustments (consisting solely of normal recurring adjustments) necessary to present fairly the financial position as of September 30, 2009, the results of operations for the three and nine months ended September 30, 2009 and 2008, and cash flows for the nine months ended September 30, 2009 and 2008.

The results of operations for interim periods are not necessarily indicative of the results to be expected for the full year.

*Recent pronouncements:*

In June 2009, the Financial Accounting Standards Board ( FASB ) issued guidance regarding The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles. This guidance, effective for interim and annual periods ending after September 15, 2009, causes The FASB Accounting Standards Codification ( Codification or ASC ) to become the sole source of authoritative U.S. generally accepted accounting principles ( GAAP ) recognized by the FASB to be applied by nongovernmental entities. Rules and interpretive releases of the Securities and Exchange Commission ( SEC ) under authority of federal securities laws are also sources of authoritative GAAP for SEC registrants. The Codification has superseded all existing non-SEC accounting and reporting standards. All other non-grandfathered non-SEC accounting literature not included in the

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Codification has become non-authoritative. The change over to the Codification has not had a material impact on the preparation of the Company's consolidated financial statements.

As of June 30, 2009, the Company adopted ASC 855 (Subsequent Events) which establishes the accounting for and disclosure of events that occur after the balance sheet date but before the financial statements are issued. It requires the disclosure of the date through which an entity has evaluated subsequent events and the basis for that date, that is, whether that date represents the date the financial statements were issued. The adoption of ASC 855 did not have a material impact on the Company's consolidated financial statements.

In April 2009, FASB released guidance that requires disclosure about the fair value of financial instruments in interim financial statements as well as in annual financial statements. The Company elected to adopt the guidance prior to its effective date.

Effective January 1, 2008, the Company adopted ASC 820 (Fair Value Measurements), except as it applied to the non-financial assets and liabilities measured or disclosed on a non-recurring basis for which the application was delayed to fiscal year years beginning after November 15, 2008. Effective January 1, 2009, the Company adopted ASC 820 as it relates to non-financial assets and liabilities measured or disclosed on a non-recurring basis. The Company is utilizing Level 1 and Level 2 inputs to measure fair value. The effect of the adoption of this Statement is not material.

The Company believes that the fair value of financial instruments, including cash and cash equivalents and accounts payable and accrued expenses, approximate their respective book values at September 30, 2009.

*New accounting standards:*

The Company reviews new accounting standards as issued. Although some of these accounting standards may be applicable to the Company, the Company has not identified any standards that it believes merit further discussion. The Company expects that none of the new standards would have a significant impact on its consolidated financial statements.

**3. Use of estimates:**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Estimates also affect the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

**4. Properties and equipment:**

Properties and equipment consists of the following:

|  | September 30,<br>2009 | December 31,<br>2008 |
|--|-----------------------|----------------------|
| Properties on lease or held for lease: |                       |                      |
| Land and land improvements             | \$ 4,621,000          | \$ 4,621,000         |
| Building, Steeple Street               | 1,772,000             | 1,772,000            |
| Construction in progress               | 1,383,000             |                      |

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|                                       |               |               |
|---------------------------------------|---------------|---------------|
|                                       | 7,776,000     | 6,393,000     |
| Petroleum storage facility, on lease: |               |               |
| Land and land improvements            | 5,591,000     | 5,591,000     |
| Buildings and structures              | 1,744,000     | 1,684,000     |
| Tanks and equipment                   | 14,600,000    | 14,593,000    |
|                                       | 21,935,000    | 21,868,000    |
| Office equipment                      | 131,000       | 131,000       |
|                                       | 29,842,000    | 28,392,000    |
| Less accumulated depreciation:        |               |               |
| Properties on lease or held for lease | 92,000        | 60,000        |
| Petroleum storage facility, on lease  | 8,271,000     | 7,789,000     |
| Office equipment                      | 101,000       | 96,000        |
|                                       | 8,464,000     | 7,945,000     |
|                                       | \$ 21,378,000 | \$ 20,447,000 |

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In February 2009, the Company entered into a construction contract at a cost of \$2,100,000 for the historic restoration and utility infrastructure of the Steeple Street building. Construction commenced in June 2009 and the Company has incurred costs of \$1,383,000 through September 30, 2009. The Company anticipates that the restoration will be substantially completed in December 2009 at a total cost of \$2,500,000 and expects to continue paying for the remaining restoration with available cash.

**5. Description of leasing arrangements:**

As of September 30, 2009, the Company had entered into five long-term land leases for five separate parcels upon which the improvements have been completed ( developed parcels ). In 2005, two additional long-term land leases commenced (undeveloped parcels) and construction of the improvements is in process on both parcels.

Under the seven land leases, the tenants are required to negotiate any tax stabilization treaty or other arrangements, appeal any changes in real property assessments, and pay real property taxes assessed under these arrangements. Accordingly, the amounts paid by the tenants are excluded from leasing revenues and leasing expenses on the accompanying consolidated statements of income. The real property taxes attributable to the Company's land under these leases totaled \$178,000 and \$898,000, respectively for the three and nine months ended September 30, 2009, and \$347,000 and \$1,078,000, respectively, for the three and nine months ended September 30, 2008.

Under one of the leases which commenced in 2005, the tenant is entitled to a credit for future rents equal to a portion of the real property taxes paid by the tenant through April 2007, which credit now totals \$520,000, the maximum amount, and is reported as deferred leasing revenues on the accompanying consolidated balance sheets. In connection with Phase I of the tenant's project, commencing July 1, 2010, the annual rental will increase from \$48,000 to \$300,000 and the Company will commence reclassifying each month \$25,000 of deferred leasing revenues to leasing revenues.

**6. Petroleum storage facility:**

*Environmental remediation:*

In 1994, a leak was discovered in a 25,000 barrel storage tank at the Terminal which allowed the escape of a small amount of fuel oil. All required notices were made to the State of Rhode Island Department of Environmental Management ( RIDEM ). In 2000, the tank was demolished and testing of the groundwater indicated that there was no large pooling of contaminants. In 2001, RIDEM approved a plan pursuant to which the Company installed a passive system consisting of three wells and commenced monitoring the wells.

In 2003, RIDEM decided that the passive monitoring system previously approved was not sufficient and required the Company to design an active remediation system for the removal of product from the contaminated site. The Company and its consulting engineers began the pre-design testing of the site in the fourth quarter of 2004. The consulting engineers estimated a total cost of \$200,000 to design, install and operate the system, which amount was accrued in 2004. Through September 30, 2009, the Company has expended \$119,000. RIDEM has not taken any action on the Company's proposed plan. As designed, the system will pump out the contaminants which will be disposed of in compliance with applicable regulations. After a period of time, the groundwater will be tested to determine if sufficient contaminants have been removed. While the Company and its consulting engineers believe that the proposed active remediation system will correct the situation, it is possible that RIDEM could require the Company to expand remediation efforts, which could result in the Company incurring additional costs.

*Environmental incident:*

In 2002, during testing of monitoring wells at the Terminal, the Company's consulting engineer discovered free floating phase product in a groundwater monitoring well located on that portion of the Terminal purchased in 2000. Laboratory analysis indicated that the product was gasoline, which is not a product the Company ever stored at the Terminal. However, in the 1950's gasoline was stored on the Company's property by a predecessor owner. The Company commenced an environmental investigation and analysis, the results of which indicate that the gasoline did not come from the Terminal. The Company notified RIDEM. RIDEM subsequently identified Power Test Realty Partnership (Power Test), the owner of an adjacent parcel, as a potentially responsible party for the contamination. Power Test challenged that determination and, after an administrative hearing, in October 2008, a RIDEM Hearing Officer determined that Power Test is responsible for the discharge of the petroleum product under the Rhode Island Oil Pollution Control Act, R.I.G.L. Section 46-12.5.1-3 and Rule 6(a) and 12(b) of the Oil Pollution Control Regulations. The RIDEM Decision and Order requires Power Test to remediate the contamination as directed by RIDEM. Getty Properties Corp. is the general partner of Power Test. In November 2008, Power Test appealed the decision to the Rhode Island Superior Court. In addition, in November 2008, Power Test sought, and

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received, a stay of the Decision and Order of the Hearing Officer pending a clarification by RIDEM of the amount of the proposed fine. There can be no assurance that the Superior Court will affirm the decision of the Administrative Hearing Officer. On April 2, 2009, the Company sued Power Test and Getty Properties Corp. in the Rhode Island Superior Court seeking remediation of the site or, in the alternative, the cost of the remediation. On May 1, 2009, Power Test and Getty Properties removed the action to the United States District Court for the District of Rhode Island. On May 22, 2009, Power Test and Getty Properties answered the Complaint and filed a Counterclaim against Dunellen, LLC and Capital Terminal Company alleging that the Dunellen, LLC and Capital Terminal Company are responsible for the contamination. There can be no assurance that the Company will prevail in this litigation.

Since January 2003, the Company has not incurred significant costs in connection with this matter, other than ongoing litigation costs, and is unable to determine the costs it might incur to remedy the situation as well as any costs to investigate, defend, and seek reimbursement from the responsible party with respect to this contamination.

**7. Income taxes:**

Deferred income taxes are recorded based upon differences between financial statement and tax basis amounts of assets and liabilities. The tax effects of temporary differences which give rise to deferred tax assets and liabilities were as follows:

|  | September<br>30,<br>2009 | December 31,<br>2008 |
|--|--------------------------|----------------------|
| Gross deferred tax liabilities:                                    |                          |                      |
| Property having a financial statement basis in excess of tax basis | \$ 5,522,000             | \$ 5,513,000         |
| Insurance premiums and accrued leasing revenue                     | 101,000                  | 92,000               |
|  | 5,623,000                | 5,605,000            |
| Gross deferred tax assets  | (324,000)                | (336,000)            |
|  | \$ 5,299,000             | \$ 5,269,000         |

**8. Shareholders equity:**

In November 2008, the Company restated its Articles of Incorporation:

To create a new class of common stock of the Company to be designated Class B Common Stock consisting of 3,500,000 shares, \$.01 par value per share;

To increase the number of authorized shares of Class A Common Stock from 6,000,000 to 10,000,000 shares; and

To provide for certain transfer and ownership restrictions as set forth therein.

In December 2008, the Company issued (in the form of a stock dividend) 3,299,956 shares of Class B Common Stock on a one-for-one basis for each share of Class A Common Stock held. The Company accounted for the stock split effective in the form of a dividend by transferring \$33,000 from capital in excess of par to Class B Common Stock on December 11, 2008.

The holders of Class A and the Class B Common Stock vote together as a single class on all matters submitted to the shareholders of the Company except for the election of the Board of Directors and except in connection with certain major corporate actions, including a sale of the Company. The holders of Class A Common Stock, voting as a separate class, elect one-third of the Board of Directors. The holders of Class B Common Stock, voting as a separate class, elect the remainder of the Board of Directors.

Class B Common Stock is convertible by the record owner thereof into the same number of shares of Class A Common Stock at anytime. For the nine months ended September 30, 2009, 351,775 shares were converted.

The Class A Common Stock is listed on the Premier QX Tier of the OTCQX (Pink Sheets). The Class B Common Stock is not listed on any national or regional stock exchange, or on the National Association of Securities Dealers Automated Quotation National Market System or on the OTCQX (Pink Sheets).

The holders of Class A and Class B Common Stock share equally in the earnings of the Company.

The holders of Class A and Class B Common Stock share equally in dividends declared by the Company. For the three months and nine months ended September 30, 2008, dividends on common stock and basic income per share



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on the accompanying consolidated statements of income have been restated to give effect to the additional shares outstanding.

The Company's Restated Articles of Incorporation prohibits any shareholder from acquiring more than a 5% interest in the Company's classes of common stock and prohibits any shareholder or any beneficial owner who, at the time of the filing of the Restated Articles of Incorporation owned 5% or more of the Company's classes of common stock from increasing their percentage ownership of either class of common stock. Should a shareholder acquire a number of shares that results in the limitation being exceeded, shares in excess of the limitation would be automatically converted into an equal number of shares of Excess Stock, which class was authorized pursuant to the 2001 Amendment to the Company's Articles of Incorporation. Excess Stock is non-voting and is not entitled to dividends. However, the shareholder may designate a qualifying transferee for shares of Excess Stock, at which time such shares would be converted and reissued as Class A or Class B Common shares as the case may be.

The purpose for creating the Class B Common Stock was to put the Company in the position to qualify to be taxed as a real estate investment trust ( REIT ). One of the qualifications to be taxed as a REIT is that no more than 50% of the shares of a company can be held by five or fewer individuals during the last half of each taxable year. Currently, the majority shareholder controls 52.3% of the Company's outstanding common stock and three other shareholders each own more than 5% of the Company's outstanding common stock. In order for the Company to qualify to be taxed as a REIT, the major shareholders' ownership of the Company's issued and outstanding common stock would need to be reduced below the 50% level.

**9. Operating segment disclosures:**

The Company operates in two segments: (1) Leasing and (2) Petroleum Storage.

The Company makes decisions relative to the allocation of resources and evaluates performance based on each segment's respective income before income taxes, excluding interest income and certain corporate expenses.

Inter-segment revenues are immaterial in amount. The Company did not incur interest expense during the nine months ended September 30, 2009 and 2008.

The following financial information is used for making operating decisions and assessing performance of each of the Company's segments for the nine months ended September 30, 2009 and 2008:

|                      | 2009         | 2008         |
|----------------------|--------------|--------------|
| <i>Leasing:</i>      |              |              |
| Revenues:            |              |              |
| Long-term leases:    |              |              |
| Contractual          | \$ 1,595,000 | \$ 1,586,000 |
| Contingent           | 99,000       | 130,000      |
| Short-term leases    | 494,000      | 538,000      |
| Total revenues       | \$ 2,188,000 | \$ 2,254,000 |
| Property tax expense | \$ 366,000   | \$ 358,000   |

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|                                     |               |               |
|-------------------------------------|---------------|---------------|
| Depreciation                        | \$ 32,000     | \$ 33,000     |
| Income before income taxes          | \$ 1,515,000  | \$ 1,744,000  |
| Assets                              | \$ 7,900,000  | \$ 6,474,000  |
| Properties and equipment, additions | \$ 1,383,000  | \$ 33,000     |
| <i>Petroleum storage:</i>           |               |               |
| Revenues:                           |               |               |
| Contractual                         | \$ 2,833,000  | \$ 2,764,000  |
| Contingent                          | 2,000         | 86,000        |
| Total revenues                      | \$ 2,835,000  | \$ 2,850,000  |
| Property tax expense                | \$ 161,000    | \$ 157,000    |
| Depreciation                        | \$ 482,000    | \$ 480,000    |
| Income before income taxes          | \$ 1,020,000  | \$ 1,224,000  |
| Assets                              | \$ 14,106,000 | \$ 14,394,000 |
| Properties and equipment, additions | \$ 67,000     | \$ 130,000    |

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The following is a reconciliation of the segment information to the amounts reported in the accompanying consolidated financial statements for the nine months ended September 30, 2009 and 2008:

|  | 2009         | 2008         |
|--|--------------|--------------|
| Revenues and other income:                         |              |              |
| Revenues for operating segments:                   |              |              |
| Leasing  | \$ 2,188,000 | \$ 2,254,000 |
| Petroleum storage                                  | 2,835,000    | 2,850,000    |
|  | 5,023,000    | 5,104,000    |
| Interest income                                    |              | 18,000       |
| Total consolidated revenues and other income       | \$ 5,023,000 | \$ 5,122,000 |
| Property tax expense:                              |              |              |
| Property tax expense for operating segments:       |              |              |
| Leasing  | \$ 366,000   | \$ 358,000   |
| Petroleum storage                                  | 161,000      | 157,000      |
|  | 527,000      | 515,000      |
| Unallocated corporate property tax expense         | 2,000        | 1,000        |
| Total consolidated property tax expense            | \$ 529,000   | \$ 516,000   |
| Depreciation:                                      |              |              |
| Depreciation for operating segments:               |              |              |
| Leasing  | \$ 32,000    | \$ 33,000    |
| Petroleum storage segment:                         | 482,000      | 480,000      |
|  | 514,000      | 513,000      |
| Unallocated corporate depreciation                 | 5,000        | 4,000        |
| Total consolidated depreciation                    | \$ 519,000   | \$ 517,000   |
| Income before income taxes:                        |              |              |
| Income before income taxes for operating segments: |              |              |
| Leasing  | \$ 1,515,000 | \$ 1,744,000 |
| Petroleum storage                                  | 1,020,000    | 1,224,000    |
|  | 2,535,000    | 2,968,000    |
| Interest income                                    |              | 18,000       |
| Unallocated corporate expenses                     | (714,000)    | (738,000)    |
| Total consolidated income before income taxes      | \$ 1,821,000 | \$ 2,248,000 |

## Assets:

## Assets for operating segments:

|                                     |               |               |
|-------------------------------------|---------------|---------------|
| Leasing                             | \$ 7,900,000  | \$ 6,474,000  |
| Petroleum storage                   | 14,106,000    | 14,394,000    |
|                                     | 22,006,000    | 20,868,000    |
| Corporate cash and cash equivalents | 2,529,000     | 2,987,000     |
| Other unallocated amounts           | 83,000        | 198,000       |
| Total consolidated assets           | \$ 24,618,000 | \$ 24,053,000 |

## Additions to properties and equipment:

## Assets for operating segments:

|   |              |            |
|---|--------------|------------|
| Leasing   | \$ 1,383,000 | \$ 33,000  |
| Petroleum storage   | 67,000       | 130,000    |
|   | 1,450,000    | 163,000    |
| Unallocated corporate additions to properties and equipment |              | 5,000      |
| Total consolidated additions                                | \$ 1,450,000 | \$ 168,000 |

**10. Subsequent events:**

The Company evaluated subsequent events through November 10, 2009, the date the financial statements were issued.

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**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

**FORWARD LOOKING STATEMENTS**

**Certain portions of this report, and particularly the Management's Discussion and Analysis of Financial Condition and Results of Operations, and the Notes to Consolidated Financial Statements, contain forward-looking statements which represent the Company's expectations or beliefs concerning future events. The Company cautions that these statements are further qualified by important factors that could cause actual results to differ materially from those in the forward-looking statements, including, without limitation, the following: the ability of the Company to generate adequate amounts of cash; the collectibility of the accrued leasing revenues when due over the terms of the long-term land leases; the commencement of additional long-term land leases; changes in economic conditions that may affect either the current or future development on the Company's parcels; and exposure to contamination, remediation or similar costs associated with the operation of the petroleum storage facility.**

**1. Overview:**

*Critical accounting policies:*

The Company believes that its revenue recognition policy for long-term leases with scheduled rent increases (leasing segment) meets the definition of a critical accounting policy which is discussed in the Company's Form 10-K for the year ended December 31, 2008. There have been no changes to the application of this accounting policy since December 31, 2008.

*Segments:*

The Company operates in two segments, leasing and petroleum storage.

The leasing segment consists of the long-term leasing of certain of its real estate interests in downtown Providence, Rhode Island (upon the commencement of which the tenants are required to construct buildings thereon, with the exception of a parking garage), the leasing of a portion of the Steeple Street Building under short-term leasing arrangements and the leasing of locations along interstate and primary highways in Rhode Island and Massachusetts to Lamar which has constructed outdoor advertising boards thereon. The Company anticipates that the future development of its remaining properties in and adjacent to the Capital Center area will consist primarily of long-term ground leases. Pending this development, the Company leases these parcels for public parking under short-term leasing arrangements.

The petroleum storage segment consists of operating the Facility located in East Providence, Rhode Island, for Global.

The principal difference between the two segments relates to the nature of the operations. The tenants in the leasing segment incur substantially all of the development and operating costs of the assets constructed on the Company's land, including the payment of real property taxes on both the land and any improvements constructed thereon; whereas the Company is responsible for the operating and maintenance expenditures, including a portion of the real property taxes, as well as capital improvements at the Facility.

**2. Results of operations:**

**Three months ended September 30, 2009 compared to three months ended September 30, 2008:**

*Leasing segment:*

|      |      |            |
|------|------|------------|
| 2009 | 2008 | Difference |
|------|------|------------|

|                  |            |            |             |
|------------------|------------|------------|-------------|
| Leasing revenues | \$ 714,000 | \$ 726,000 | \$ (12,000) |
| Leasing expense  | 266,000    | 141,000    | 125,000     |
|                  | \$ 448,000 | \$ 585,000 |             |

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Leasing revenue decreased due to rent relief granted to two tenants. The Company agreed not to increase the rent of the short-term parking tenant for the period January 1, 2009 to March 31, 2009 and further agreed to reduce the rent 10% for the balance of 2009. The Company granted Lamar rent relief for the period of January 1, 2009 to May 31, 2010. The annual impact for 2009 of these two rent reliefs is \$95,000. Leasing expense increased due to legal fees in connection with two leases and the hiring of a new part time employee.

*Petroleum storage segment:*

|                                     | 2009       | 2008       | Difference |
|-------------------------------------|------------|------------|------------|
| Petroleum storage facility revenues | \$ 950,000 | \$ 948,000 | \$ 2,000   |
| Petroleum storage facility expense  | 591,000    | 566,000    | \$ 25,000  |
|                                     | \$ 359,000 | \$ 382,000 |            |

Petroleum storage facility revenues remained at the 2008 level. Petroleum storage facility expense increased due to the hiring of a new employee and legal fees associated with a Wilkesbarre Pier litigation and a litigation against Power Test Realty Partnership in connection with the environmental incident in 2002 in which the Company is seeking remediation of the site or, in the alternative, the cost of remediation.

Due to a decrease in the cost-of-living index, there was no rent adjustment under the lease for the petroleum storage facility for the contract year commencing May 1, 2009.

*General:*

For the three months ended September 30, 2009, general and administrative expense increased \$31,000 from 2008 due to an increase in professional fees.

*Other income, interest:*

Interest income decreased because the Company elected in February 2009 to maintain all of its cash in a non-interest bearing checking account which is fully insured by the Federal Deposit Insurance Corporation.

**Nine months ended September 30, 2009 compared to nine months ended September 30, 2008:***Leasing segment:*

|                  | 2009         | 2008         | Difference  |
|------------------|--------------|--------------|-------------|
| Leasing revenues | \$ 2,188,000 | \$ 2,254,000 | \$ (66,000) |
| Leasing expense  | 673,000      | 510,000      | \$ 163,000  |
|                  | \$ 1,515,000 | \$ 1,744,000 |             |

Leasing revenue decreased due to rent relief granted to two tenants. The Company agreed not to increase the rent of the short-term parking tenant for the period January 1, 2009 to March 31, 2009 and further agreed to reduce the rent 10% for the balance of 2009. The Company granted Lamar rent relief for the period of January 1, 2009 to May 31, 2010. The annual impact for 2009 of these two rent reliefs is \$95,000. In addition, contingent revenue under the billboard land lease decreased \$28,000 from 2008. Leasing expense increased due to legal fees in

connection with two leases and the hiring of a new part time employee.

*Petroleum storage segment:*

|                                     | 2009         | 2008         | Difference  |
|-------------------------------------|--------------|--------------|-------------|
| Petroleum storage facility revenues | \$ 2,835,000 | \$ 2,850,000 | \$ (15,000) |
| Petroleum storage facility expense  | 1,815,000    | 1,626,000    | \$ 189,000  |
|                                     | \$ 1,020,000 | \$ 1,224,000 |             |

Petroleum storage facility revenues decreased as a result of a decrease in contingent revenue in 2009 due to lower throughput offset in part by higher monthly rent resulting from the annual cost-of-living adjustment May 1, 2008 and payments by tenant of certain repairs. Petroleum storage facility expense increased due to repairs on the Wilkesbarre Pier, the hiring of a new employee and legal fees associated with the Wilkesbarre Pier litigation and the litigation against Power Test Realty Partnership in connection with the environmental incident in 2002 in which the Company is seeking remediation of the site or, in the alternative, the cost of remediation.



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Due to a decrease in the cost-of-living index, there was no rent adjustment under the lease for the petroleum storage facility for the contract year commencing May 1, 2009.

*General:*

For the nine months ended September 30, 2009, general and administrative expense decreased \$24,000 from 2008 due to a decrease in professional fees.

*Other income, interest:*

Interest income decreased because the Company elected in February 2009 to maintain all of its cash in a non-interest bearing checking account which is fully insured by the Federal Deposit Insurance Corporation.

**3. Liquidity and capital resources:**

Historically, the Company has had adequate liquidity to fund its operations.

During the nine months ended September 30, 2009, the Company's operating activities provided \$1,059,000 of cash. Cash and cash equivalents decreased by \$707,000 for the same period. The principal utilization of cash during the nine months ended September 30, 2009, was for the payment of dividends of \$594,000 and payments for the construction at the Steeple Street Building of \$1,105,000.

*Cash and cash commitments:*

At September 30, 2009, the Company had cash of \$2,688,000. Effective February 2009, the Company maintains all of its cash in a non-interest bearing checking account which is fully insured by the Federal Deposit Insurance Corporation.

Under the terms of the Company's long-term land leases, appraisals of the premises are periodically required at various stated intervals to provide the basis for recalculating the annual rent. However, if as a result of such appraisal the annual rent is calculated to be less than the then current rent, the annual rent will remain at the current level.

The first of such scheduled appraisals was completed in the second quarter of 2009 for Parcel 3S and resulted in an annual increase in rent from \$468,000 to \$485,000 (\$9.92 per square foot) effective October 1, 2009.

A second appraisal commences later this year for Parcel 8 to determine what amount, if any, the annual rent will be increased effective February 1, 2010. The current annual rent is \$223,000 (\$6.16 per square foot).

In June 2009, the Company commenced the historic restoration and improvements to the Steeple Street Building at an original total cost of \$2,100,000. Through September 30, 2009, the Company has incurred costs of \$1,383,000. The Company anticipates that the restoration will be substantially completed in December 2009 at a total cost of \$2,500,000 and expects to continue paying for the remaining restoration from available cash. The Company anticipates that the expenditures will qualify in 2010 for Federal historic tax credits totaling approximately \$350,000. Upon the completion of the construction, the Company will actively market for lease the remaining portion of the building.

In October 2009, the Company declared a quarterly dividend of \$198,000 (\$.03 per common share, which is the equivalent of the \$.06 per common share paid prior to the stock dividend in December 2008), which dividend will

be paid in November 2009. The declaration of future dividends and the amount thereof will depend on the Company's future earnings, financial factors and other events.

The Company expects that cash generated from current operations will continue to be sufficient to meet operating expenses, ordinary capital expenditures, the cost of the Steeple Street construction and the current level of dividends.

In July 2009, the Company received notice from the holder of the leasehold mortgage on Parcel 8 that the Parcel 8 tenant was in default. A foreclosure sale was held on September 1, 2009, and the building was sold to the leasehold mortgagee. Under the terms of the Parcel 8 long-term land lease, upon the foreclosure of the leasehold mortgage, the Company is required to enter into a new long-term lease with the leasehold mortgagee or its assignee on substantially the same terms and conditions as the existing lease for Parcel 8. No new lease has been entered into to date. In such circumstances, the new tenant is required to cure any prior monetary defaults. The rent has continued

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to be paid in a timely fashion, and the Company also received the rent for November 2009. The Company has no reason to believe that the leasehold mortgagee will not pay the rent and property taxes in a timely fashion.

The current economic downturn has had some impact on the Company's results of operations to date. Leasing revenues decreased due to rent relief granted to two tenants. The Company agreed not to increase the rent of the short-term parking tenant for the period January 1, 2009 to March 31, 2009 and further agreed to reduce the rent by 10% for the balance of 2009. The Company granted Lamar rent relief for the period of January 1, 2009 to May 31, 2010. The annual impact for 2009 of these two rent reliefs is \$95,000. As none of the Company's leases require the tenant to provide financial information, the Company has no information concerning the impact of the financial crisis on its major tenants and, therefore, cannot predict whether any other tenants will request such relief or concessions.

Under the Company's lease with Global, in previous years, the Company has earned contingent revenue based upon petroleum throughput in excess of 4,000,000 barrels in any contract year. In 2008, the contingent revenue earned was \$88,000. For the contract year ending April 30, 2009, the Company earned \$2,000. The Company is unable to determine what, if any, contingent revenue it will earn for the contract year ending April 30, 2010, or if there will be an annual cost-of-living increase at that time.

Under one of the Company's long-term leases, the tenant is entitled to a credit for future rents equal to a portion of the real property taxes paid by the tenant through April 2007, which credit now totals \$520,000, the maximum amount. In connection with Phase I of the tenant's project, commencing July 1, 2010, the annual rental will increase from \$48,000 to \$300,000 and the Company will reclassify each month \$25,000 of deferred leasing revenues to leasing revenues.

In management's opinion, the Company should be able to generate adequate amounts of cash to meet all of its anticipated obligations. In the event temporary additional liquidity is required, the Company believes that a line of credit or other arrangements could be obtained by pledging some or all of its unencumbered assets as collateral.

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**Item 4. Controls and Procedures**

As required by Rule 13a-15 under the Securities Exchange Act of 1934, as amended (the Exchange Act ), the Company carried out an evaluation of the effectiveness of the design and operation of the Company s disclosure controls and procedures as of the end of the period covered by this report. This evaluation was carried out under the supervision and with the participation of the Company s management, including the Company s principal executive officer and the Company s principal financial officer. Based upon that evaluation, the principal executive officer and the principal financial officer concluded that the Company s disclosure controls and procedures are effective to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission rules and forms.

There was no significant change in the Company s internal control over financial reporting that occurred during the Company s most recent fiscal quarter that has materially affected, or is reasonably likely to affect, the Company s internal control over financial reporting. The Company continues to enhance its internal controls over financial reporting, primarily by evaluating and enhancing process and control documentation. Management discusses with and discloses these matters to the Audit Committee of the Board of Directors and the Company s auditors.

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**PART II OTHER INFORMATION**

**Item 6. Exhibits**

**(b) Exhibits:**

- 3.1** Restated Articles of Incorporation (incorporated by reference to Exhibit 3.1 to the registrant's annual report on Form 10-K for the year ended December 31, 2008).
- 3.2** By-laws, as amended (incorporated by reference to Exhibit 3.2 to the registrant's annual report on Form 10-K for the year ended December 31, 2007).
- 10** Material contracts:
  - (a) Lease between Metropark, Ltd. and Company:**
    - (i) Dated January 1, 2005 (incorporated by reference to Exhibit 10(a) to the registrant's annual report on Form 10-KSB for the year ended December 31, 2004), as amended.
  - (b) Miscellaneous contract:**
    - (i) Option Agreement to Purchase Real Property and Related Assets, dated June 9, 2003, by and between Dunellen, LLC and Global Companies, LLC (incorporated by reference to Exhibit 10(b)(i) to the registrant's Report on Form 10-QSB/A for the quarterly period ended June 30, 2003), as amended.
- 31.1** Rule 13a-14(a) Certification of President and Principal Executive Officer
- 31.2** Rule 13a-14(a) Certification of Treasurer and Principal Financial Officer
- 32.1** Certification of President and Principal Executive Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- 32.2** Certification of Treasurer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

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SIGNATURE

In accordance with the requirements of the Exchange Act, the Issuer caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

CAPITAL PROPERTIES, INC.

By /s/ Robert H. Eder  
Robert H. Eder  
President and Principal Executive  
Officer

By /s/ Barbara J. Dreyer  
Barbara J. Dreyer  
Treasurer and Principal Financial  
Officer

DATED: November 10, 2009