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UNI MARTS INC
Form 10-K/A
May 28, 2004

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

FORM 10-K/A
Amendment No. 2

(Mark One)

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

For the fiscal year ended September 30, 2003

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 1-11556

UNI-MARTS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

25-1311379
(I.R.S. Employer
Identification No.)

477 East Beaver Avenue,
State College, PA
(Address of principal executive offices)

16801-5690
(Zip Code)

Registrant's telephone number, including area code (814) 234-6000

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

| Title of each class ----- | Name of each exchange on which registered ----- |
|-------------------------------|---|
| Common Stock, \$.10 Par Value | American Stock Exchange |

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

None
(Title of Class)

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 ☒ No ☐

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Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the 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. [X]

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes [] No [X]

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter: \$8,264,219.

7,196,273 shares of Common Stock were outstanding at December 5, 2003.

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This Form 10-K/A Amendment No. 2 is being filed to amend Item 9A, Item 15 and Exhibit 32.2 of the Annual Report on Form 10-K of Uni-Marts Inc. for the year ended September 30, 2003, which was filed with the Securities and Exchange Commission on December 22, 2003.

ITEM 9A. CONTROLS AND PROCEDURES.

CEO and CFO Certifications. Appearing as Exhibits 31.1 and Exhibit 31.2 of this Annual Report are two certifications, one by each of our Chief Executive Officer and our Chief Financial Officer (the "Section 302 Certifications"). This Item 9A of our Annual Report contains information concerning the evaluation of the Company's disclosure controls and procedures and matters regarding our

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internal controls that are referred to in the Section 302 Certifications. This information should be read in conjunction with the Section 302 Certifications for a more complete understanding of the topics referred to in the Section 302 Certifications.

Evaluation of Our Disclosure Controls and Procedures. The Securities and Exchange Commission (the "SEC") requires that as of the end of the period covered by this Annual Report, the CEO and

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the CFO must evaluate the effectiveness of the design and operation of our disclosure controls and procedures and report on the effectiveness of the design and operation of our disclosure controls and procedures.

"Disclosure controls and procedures" mean the controls and other procedures that are designed with the objective of ensuring that information required to be disclosed in our reports filed under the Securities Exchange Act of 1934 (the "Exchange Act"), such as this Annual Report, is recorded, processed, summarized and reported within the time periods specified in the rules and forms promulgated by the Securities and Exchange Commission (the "SEC"). Disclosure controls and procedures are also designed with the objective of ensuring that such information is accumulated and communicated to our management, including the CEO and CFO, as appropriate to allow timely decisions regarding required disclosure.

Evaluation of Our Internal Control Over Financial Reporting. The SEC also requires that the CEO and CFO certify certain matters regarding our internal control over financial reporting.

"Internal control over financial reporting" means the process designed by, or under the supervision of, our CEO and CFO, and implemented by management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that: (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the issuer's assets that could have a material effect on the financial statements.

Among the matters our CEO and CFO must certify in the Section 302 Certifications are whether all "significant deficiencies" or "material weakness" in the design or operation of our internal control over financial reporting that are likely to adversely affect our ability to record, process, summarize and report financial information have been disclosed to our auditors and the Audit Committee of our Board of Directors. "Significant deficiencies" has the same meaning as the term "reportable conditions" in auditing literature. Both terms represent deficiencies in the design or operation of internal control over financial reporting that could adversely affect a company's ability to record, process, summarize and report financial data consistent with the assertions of management in a company's financial statements. A "material weakness" is defined in the auditing literature as a particularly serious reportable condition where the design or operation of one or more internal control over financial reporting components does not reduce to a relatively low level the risk that misstatements caused by error or fraud may occur in amounts that would be material in relation

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to the financial statements and not be detected within a timely period by employees in the normal course of performing their assigned functions. A "material weakness" constitutes a greater deficiency than a "significant deficiency, but an aggregation of significant deficiencies may constitute a material weakness in a company's internal control over financial reporting.

Limitations on the Effectiveness of Controls. The Company's management, including the CEO and CFO, does not expect that our disclosure controls and procedures or our internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, as opposed to absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that

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the benefits of controls must be considered relative to their costs. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of an employee, by collusion of two or more employees, or by management override of the control. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

CEO/CFO Conclusions about the Effectiveness of the Disclosure Controls and Procedures. As required by Rule 13a-15(b), the Company's management, including our CEO and CFO, conducted an evaluation as of the end of the period covered by this report, of the effectiveness of the Company's disclosure controls and procedures. Based on that evaluation, the CEO and CFO concluded that, despite the limitations noted above, our disclosure controls and procedures are effective to provide reasonable assurance that the disclosure controls and procedures will meet their objectives.

Changes in Internal control over financial reporting. As required by Rule 13a-15(d), the Company's management, including the CEO and CFO conducted an evaluation of the Company's internal control over financial reporting to determine whether any changes occurred during the period covered by this report that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting. Based on that evaluation, there has been no such change during the period covered by this report.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENTS AND REPORTS ON FORM 8-K.

(A) FINANCIAL STATEMENTS AND SCHEDULE

The Financial Statements listed below are filed as part of this Annual Report on Form 10-K.

(1) FINANCIAL STATEMENTS

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(2) FINANCIAL STATEMENT SCHEDULE

The following financial statement schedule should be read in conjunction with the audited consolidated financial statements and notes thereto included in this report. Schedules not included below have been omitted because they are not applicable or required or because the required information is not material or is included in the audited consolidated financial statements or notes thereto.

The following schedule for the years ended September 30, 2003, 2002 and 2001 is included in this report:

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| Schedule II -- Valuation and Qualifying Accounts..... | 55 |

(B) REPORTS ON FORM 8-K

The Company filed a report on Form 8-K with the Securities and Exchange Commission on July 31, 2003, announcing its financial results for the fiscal 2003 third quarter, ended July 3, 2003.

(C) EXHIBITS

- 3.1 Amended and Restated Certificate of Incorporation of the Company (Filed as Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q for the period ended April 4, 2002, File No. 0-15164, and incorporated herein by reference thereto).
- 3.2 Amended and Restated By-Laws of the Company (Filed as Exhibit 3.2 to the Company's Quarterly Report on Form 10-Q for the period ended April 4, 2002, File No. 0-15164, and incorporated herein by reference thereto).
- 4.1 Form of the Company's Common Stock Certificate (Filed as Exhibit 4.3 to the Company's Quarterly Report on Form 10-Q for the period ended April 1, 1993, File No. 1-11556, and incorporated herein by reference thereto).

- 4.2 Rights Agreement (Filed as Exhibit 4(ii) to the Company's Registration Statement on Form 8-A/A, filed February 14, 2002, File No. 1-11556, and incorporated herein by reference

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- thereto).
- 10.1 Uni-Marts, Inc. Amended and Restated Equity Compensation Plan (Filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the period ended March 30, 1995 and incorporated herein by reference thereto).
 - 10.2 Amendment 1998-1 to the Uni-Marts, Inc. Equity Compensation Plan (Filed as Exhibit 10.10 to the Annual Report of Uni-Marts, Inc. on Form 10-K for the year ended September 30, 1998 and incorporated herein by reference thereto).
 - 10.3 Uni-Marts, Inc. Deferred Compensation Plan (Filed as Exhibit 10.8 to the Annual Report of Uni-Marts, Inc. on Form 10-K for the year ended September 30, 1990, File No. 0-15164, and incorporated herein by reference thereto).
 - 10.4 Uni-Marts, Inc. 1996 Equity Compensation Plan (Filed as Exhibit A to the Company's Definitive Proxy Statement for the February 22, 1996 Annual Meeting of Stockholders and incorporated herein by reference thereto).
 - 10.5 Amendment 2001-1 to the Uni-Marts, Inc. 1996 Equity Compensation Plan (Filed as Appendix A to the Company's Definitive Proxy Statement for the February 21, 2002 Annual Meeting of Stockholders and incorporated herein by reference thereto).
 - 10.6 Form of Indemnification Agreement between Uni-Marts, Inc. and each of its Directors (Filed as Exhibit A to the Company's Definitive Proxy Statement for the February 25, 1988 Annual Meeting of Stockholders, File No. 0-15164, and incorporated herein by reference thereto).
 - 10.7 Composite copy of Change of Control Agreement between Uni-Marts, Inc. and its executive officers dated March 13, 2002. The Senior Vice President, Operations is also a party to a Change of Control Agreement with the Company dated March 13, 2002 which is substantially identical to the agreement between the Company and each of its executive officers. (Filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the period ended April 4, 2002 and incorporated herein by reference thereto).
 - 10.8 Composite copy of Change of Control Agreement between the Company and its Senior Vice President, Facilities Development and its Senior Vice President, Budgeting and Planning dated May 28, 2002 (Filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the period ended July 4, 2002 and incorporated herein by reference thereto).
 - 10.9 Amended and Restated Note between Henry D. Sahakian and Uni-Marts, Inc. dated January 25, 1999 (Filed as Exhibit 10.10 to the Company's Quarterly Report on Form 10-Q for the period ended April 1, 1999 and incorporated herein by reference thereto).
 - 10.10 Loan Agreement between FFCA Acquisition Corporation and Uni-Marts, Inc. dated June 30, 1998 (Filed as Exhibit 10.10 to the Company's Quarterly Report on Form 10-Q for the period ended July 2, 1998 and incorporated herein by reference thereto).
 - 10.11 Loan Agreement between FFCA Acquisition Corporation and Uni Realty of Wilkes Barre, L.P. dated April 21, 2000 (Filed as Exhibit 20.1 to the Company's Form 8-K filed on May 8, 2000 and incorporated herein by reference thereto).
 - 10.12 Loan Agreement between FFCA Funding Corporation and Uni Realty of Luzerne, L.P. dated April 21, 2000 (Filed as Exhibit 20.2 to the Company's Form 8-K filed on May 8, 2000 and incorporated herein by reference thereto).

- 10.13 Equipment Loan Agreement between FFCA Acquisition Corporation and Uni-Marts, Inc. dated April 21, 2000 (Filed as Exhibit 20.3 to the Company's Form 8-K filed on May 8, 2000 and incorporated herein by reference thereto).
- 10.14 Equipment Loan Agreement between FFCA Funding Corporation and Uni-Marts, Inc. dated April 21, 2000 (Filed as Exhibit 20.4 to the Company's Form 8-K filed on May 8, 2000 and incorporated herein by reference thereto).
- 10.15 Revolving Credit Loan Agreement between Provident Bank and Uni-Marts, Inc. dated April 20, 2000 (Filed as Exhibit 10.15 to the Company's Quarterly Report on Form 10-Q for the period ended June 29, 2000 and incorporated herein by reference thereto).
- 10.16 Amendment to the Revolving Credit Loan Agreement between Provident Bank and Uni-Marts, Inc. dated January 16, 2001 (Filed as Exhibit 10.17 to the Company's Quarterly Report on Form 10-Q for the period ended April 5, 2001 and incorporated herein by reference thereto).
- 10.17 Amendment to the Revolving Credit Loan Agreement between Provident Bank and Uni-Marts, Inc. dated March 31, 2001 (Filed as Exhibit 10.18 to the Company's Quarterly Report on Form 10-Q for the period ended April 5, 2001 and incorporated herein by reference thereto).
- 10.18 Third Amendment to the Revolving Credit Loan Agreement between Provident Bank and Uni-Marts, Inc. dated December 21, 2001 (Filed as Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the period ended January 3, 2002 and incorporated herein by reference thereto).
- 10.19 Fourth Amendment to the Revolving Credit Loan Agreement between Provident Bank and Uni-Marts, Inc. dated September 30, 2002. (Filed as Exhibit 10.22 to the Company's Annual Report on Form 10-K for the period ended September 30, 2002 and incorporated herein by reference thereto).
- 10.20 Fifth Amendment to Loan Agreement between Provident Bank and Uni-Marts, Inc. effective as of April 1, 2003 (Filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the period ended April 3, 2003 and incorporated herein by reference thereto).
- 10.21 Shortfall Loan Agreement between Provident Bank and Uni-Marts, Inc. dated as of September 30, 2003.
- 10.22 Master Property Disposition Agreement effective as of September 30, 2003 by and among Washington Mutual Bank, FA, Uni-Marts, Inc., and Uni Realty of Luzerne, L.P.
- 10.23 Master Property Disposition Agreement effective as of September 30, 2003 by and between LaSalle Bank National Association as Indenture Trustee pursuant to that certain Indenture dated as of April 1, 1999, and Uni-Marts, Inc.
- 10.24 Master Property Disposition Agreement effective as of September 30, 2003 by and among LaSalle Bank National Association as Indenture Trustee pursuant to that certain Indenture dated as of November 1, 2000, Uni-Marts, Inc., and Uni Realty of Wilkes-Barre, L.P.
- 10.25 Amended and Restated Transaction Success Bonus Plan dated October 11, 2002. (Filed as Exhibit 10.23 to the Company's Annual Report on Form 10-K for the period ended September 30, 2002 and incorporated herein by reference thereto).
- 11 Statement regarding computation of per share earnings (loss).

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14 Code of Ethics.
21 Subsidiaries of the registrant.

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23 Consent of Deloitte & Touche LLP.
31.1 Certification of the Chairman and Chief Executive Officer
pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2 Certification of the Chief Financial Officer pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002.
31.3 Certification of the Chairman and Chief Executive Officer
pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.4 Certification of the Chief Financial Officer pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002.
32.1 Certification of the Chairman and Chief Executive Officer
pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2 Certification of the Chief Financial Officer pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002.
99.1 Report on Form 11-K.

(D) SCHEDULE

The schedule listed in Item 15(A) (2) is filed as part of this Annual Report on Form 10-K.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

UNI-MARTS, INC.
(Registrant)

By: /S/ HENRY D. SAHAKIAN

Henry D. Sahakian
Chairman of the Board
(Principal Executive Officer)

By: /S/ N. GREGORY PETRICK

N. Gregory Petrick
Executive Vice President and
Chief Financial Officer
(Principal Accounting Officer)
(Principal Financial Officer)

DATED: May 28, 2004

UNI-MARTS, INC. AND SUBSIDIARIES
EXHIBIT INDEX

| Number ----- | Description ----- |
|-----------------|--|
| 31.3 | Certification of the Chairman and Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 31.4 | Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 32.2 | Certification of the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |