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**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE NORTHERN DISTRICT OF TEXAS**
**FORT WORTH DIVISION**

| | | |
|---|---|---|
| **In re** | § | **Chapter 11** |
| **PILGRIM'S PRIDE CORPORATION, *et al.*,** | § | **Case No. 08-45664 (DML)** |
| | § | **Hearing Date: August 4, 2009 at 10:30 a.m.** |
| **Debtors.** | § | **Objection Deadline: July 28, 2009 at 4:00 p.m.** |
| | § | **JOINTLY ADMINISTERED** |

**MOTION TO ASSUME UNISYS MAINTENANCE AGREEMENT, AS AMENDED**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON AUGUST 4, 2009 AT 10:30 AM (CT) AT THE ELDON B. MAHON U.S. COURTHOUSE, 501 W. TENTH STREET, FORT WORTH, TEXAS. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT BY JULY 28, 2009 AT 4:00 PM (CT). YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PARTIES INCLUDED ON THE MASTER SERVICE LIST FILED WITH THIS COURT.**


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TO THE HONORABLE D. MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE:

Pilgrim's Pride Corporation ("PPC") and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the "Debtors"),[1] respectfully represent:

## Background

1. On December 1, 2008 (the "Commencement Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

## Pilgrim's Pride's Businesses

3. PPC, together with its debtor and non-debtor subsidiaries (collectively, "Pilgrim's Pride"), has one of the best brand names in the chicken industry. It is one of the largest producers of chicken in the United States and the second-largest producer in Mexico. Pilgrim's Pride has operations throughout the continental United States, Puerto Rico, and Mexico. Based on the total annual chicken production in 2007 in the United States, the Debtors estimate that Pilgrim's Pride has the highest market share in the United States. Formed in 1946

[1] The Debtors in these cases are PPC; PFS Distribution Company; PPC Transportation Company; To-Ricos, Ltd.; To-Ricos Distribution, Ltd.; Pilgrim's Pride Corporation of West Virginia, Inc.; and PPC Marketing, Ltd.

as a retail feed store partnership between Lonnie A. "Bo" Pilgrim and his brother, Aubrey E. Pilgrim, PPC has been a publicly traded company since 1986.

4. Through vertical integration, Pilgrim's Pride manages the breeding, hatching and growing of chickens. Pilgrim's Pride also manages the processing, preparation, packaging, sale and distribution of its product lines, which Pilgrim's Pride believes has made it one of the highest quality, lowest-cost producers of chicken in North America. In the continental United States, Pilgrim's Pride produces both prepared chicken products and fresh chicken products. In Mexico and Puerto Rico, it produces exclusively fresh chicken products. Pilgrim's Pride's products are sold to foodservice, retail and frozen entrée customers, distributed primarily through retailers, foodservice distributors and restaurants.

## Jurisdiction and Venue

5. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## Relief Requested

6. Pursuant to section 365 of the Bankruptcy Code and Bankruptcy Rule 6006, the Debtors seek to assume the Master Agreement (as defined below) with Unisys Corporation ("Unisys"), as amended.

## The Unisys Maintenance Agreement

7. Prior to the Commencement Date, PPC and Unisys entered into that certain Master Agreement for Products and Services dated as of November 7, 2001 (the "Master Agreement") pursuant to which Unisys provides PPC with maintenance and repair of hardware equipment (the "Hardware") required to operate software necessary for PPC's business operations, such as production reporting, accounting, billing, human resources and treasury (the

"Software"). Unisys sold and installed the Hardware, and as a result is uniquely situated to maintain it. The Master Agreement has produced a longstanding relationship between PPC and Unisys. The prompt guarantee of service that the agreement provides assures that the Debtors' businesses will be able to function efficiently and without interruption. An alternative maintenance provider is not available for this particular Hardware.

8. The Debtors have ceased using three servers maintained by Unisys, and as a result have requested that Unisys amend the Master Agreement to reduce the monthly maintenance charges. On June 5, 2009, the Debtors and Unisys entered into an amendment to the Master Agreement to reduce the monthly payments for maintenance from $45,961.16 to $28,198.29 per month, retroactive to February 1, 2009 (the "Amendment"). Effectiveness of the Amendment is subject to assumption by the Debtors of the Master Agreement, as amended.

9. The Debtors and Unisys have agreed that there is an outstanding balance owed to Unisys in the amount of $204,575.21 (the "Cure Amount"), representing $102,909.65 for prepetition services and $101,665.56 for postpetition services.[2]

**Assumption of the Master Agreement is Warranted Under Section 365 of the Bankruptcy Code**

10. Section 365 allows the debtor in possession to maximize the value of a debtor's estate by assuming executory contracts or unexpired leases that benefit the estate and by rejecting those that do not. *In re Nat'l Gypsum Co.*, 208 F.3d 498, 505 (5th Cir. 2000). Section 365 of the Bankruptcy Code provides as follows:

> (a) Except as provided in . . . subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

[2] The amount outstanding for postpetition services reflects the reduction of the monthly payments retroactive to February 1, 2009 pursuant to the Amendment.

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debt the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee:
>
> > (A) cures, or provides adequate assurance that the trustee will promptly cure such default;
> >
> > (B) compensates or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
> >
> > (C) provides adequate assurance of future performance under such contract or lease. . . .

*See* 11 U.S.C. §§ 365(a), (b)(1). Accordingly, section 365 authorizes the proposed assumption of the Master Agreement, provided that any defaults under the Master Agreement are cured and adequate assurance of future performance is provided to Unisys. The Debtors and Unisys have agreed that payment in the amount of $204,575.21 is sufficient to cure existing defaults in satisfaction of section 365(b) of the Bankruptcy Code.

11. The words "adequate assurance of future performance" must be given a "practical, pragmatic construction" in light of the proposed assumption. *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *see also Texas Health Enterprises Inc. v. Lytle Nursing Home (In re Texas Health Enterprises Inc.)*, 72 Fed. Appx. 122, 126 (5th Cir. 2003) (same); *In re PRK Enterprises, Inc.*, 235 B.R. 597, 603 (Bankr. E.D. Tex. 1999) (same).

12. Due to the aforementioned modification of the Master Agreement, and more specifically, the reduction in the monthly servicing fees, the Debtors are prepared to give adequate assurance that payments on the Master Agreement will be timely. The Debtors and Unisys have engaged in fair, arms length negotiations which have resulted in setting a monthly

service fee that the Debtors will be able to pay in a timely manner and which Unisys is willing to accept. The assumption of the Master Agreement will benefit the Debtors' estates by allowing the Debtors to continue to use the Hardware to operate their business normally and efficiently.

13. To successfully implement the foregoing, the Debtors seek a waiver of the ten-day stay under Bankruptcy Rule 6006(d).

**Notice**

14. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) counsel to the statutory committees appointed in these chapter 11 cases; (iii) counsel to the Debtors' prepetition secured lenders; (iv) counsel to the Agent to the Debtors' postpetition lenders; (v) counsel to Unisys; and (vi) all parties on the Master Service List filed with this Court (collectively, the "Notice Parties"). The Debtors submit that no other or further notice need be provided.

**No Previous Request**

15. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: June 30, 2009
Fort Worth, Texas

_/s/ Stephen A. Youngman_____
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**ORDER PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE APPROVING THE ASSUMPTION OF THE UNISYS MAINTENANCE AGREEMENT, AS AMENDED**

(Relates to Docket No.___)

Upon the motion, dated June 30, 2009 (the "Motion"), of Pilgrim's Pride Corporation and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the "Debtors"),[1] pursuant to section 365 of the Bankruptcy Code and Bankruptcy Rule 6006 for approval of the assumption by the Debtors of the Master Agreement,[2] as amended, all as more fully set forth in the Motion; and the Court having

[1] The Debtors in these cases are PPC; PFS Distribution Company; PPC Transportation Company; To-Ricos, Ltd.; To-Ricos Distribution, Ltd.; Pilgrim's Pride Corporation of West Virginia, Inc.; and PPC Marketing, Ltd.

[2] Capitalized words used but not defined herein shall have the same meaning ascribed to them in the Motion.

jurisdiction to consider the Motion and grant the requested relief in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Debtors having provided notice of the Motion and Hearing (as defined below) to the Notice Parties; and the Court having held a hearing to consider the requested relief (the "Hearing") with the appearances of all interested parties noted in the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion are in the best interests of the Debtors, their estates, and their creditors; and the Court having found that the Debtors have provided due and proper notice of the Motion and Hearing and no further notice is necessary; and the Court having determined that the legal and factual bases set forth in the Motion establish just and sufficient cause to grant the relief requested herein; and therefore, it is:

ORDERED that the Motion is granted; and it is further

ORDERED that Debtors are authorized to enter into the Amendment; and it is further

ORDERED that, pursuant to section 365 of the Bankruptcy Code, the Debtors are authorized to assume the Master Agreement, as amended; and it is further

ORDERED that the Cure Amount of $204,575.21 is hereby approved and that the Debtors shall not be required to make further payment in connection with any default under the Master Agreement in excess of the applicable Cure Amount; and it is further

ORDERED that the Debtors have provided adequate assurance of future performance of the Master Agreement, and that no further showing of adequate assurance is necessary; and it is further

ORDERED that the ten-day stay under Bankruptcy Rule 6006(d) is waived; and it is further

ORDERED that the Court hereby retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

# # # END OF ORDER # # #