

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

	)		Chapter 11
In re:	)		
	)		Case No. 22-10584 (CTG)
FIRST GUARANTY MORTGAGE	)		
CORPORATION, <i>et al.</i> , <sup>1</sup>	)		(Jointly Administered)
	)		
	)		<b>Related Docket Nos. 160, 201</b>
Debtors.	)		
	)		

**CERTIFICATION OF COUNSEL REGARDING MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) APPROVING KEY EMPLOYEE INCENTIVE PROGRAM, (II) KEY EMPLOYEE RETENTION PROGRAM, AND (III) GRANTING RELATED RELIEF**

The undersigned proposed counsel for the above-captioned debtors and debtors in possession (the “Debtors”) hereby certifies that:

1. On July 20, 2022, the Debtors filed the *Motion of Debtors for Entry of an Order (I) Approving Key Employee Incentive Program, (II) Key Employee Retention Program, and (III) Granting Related Relief* [Docket No. 160] (the “Motion”).
2. The Official Committee of Unsecured Creditors filed a limited objection to the Motion [Docket No. 201] (the “Committee Objection”). The Office of the United States Trustee (the “UST”) provided informal comments to the Motion.
3. On August 2, 2022, the Court held a hearing (the “Hearing”) on the Motion. The parties advised the Court that the Debtors had resolved the Committee Objection and UST comments.
4. At the conclusion of the Hearing, the Court directed the Debtors to submit a form of order under certification of counsel.

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are: First Guaranty Mortgage Corporation (9575); and Maverick II Holdings, LLC (5621). The Debtors’ mailing address is 5400 Tennyson Parkway, Suite 450, Plano, TX 75024.



5. Attached hereto as **Exhibit A** is a proposed form of order approving the Motion (the “Proposed Order”) as it relates to the KERP (as defined in the Motion) and adjourning the hearing on the relief related to the KEIP (as defined in the Motion) to August 11, 2022 at 2:00 p.m. (ET) (the “Proposed Order”). The UST has no objection to entry of the Proposed Order.
6. Accordingly, the Debtors respectfully request entry of the Proposed Order attached hereto as **Exhibit A** at the Court’s earliest convenience.

Dated: August 4, 2022

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**EXHIBIT A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

FIRST GUARANTY MORTGAGE  
CORPORATION, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-10584 (CTG)

(Jointly Administered)

**Ref Docket No. 160**

**ORDER APPROVING KEY EMPLOYEE RETENTION PLAN**

The Court has considered the *Debtors' Motion for an Order (I) Approving Key Employee Incentive Plan (II) Approving Key Employee Retention Plan for Non-Insider Employees* (the "Motion").<sup>2</sup> The Court has reviewed the Motion and has found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012, and that this Court may enter a final order consistent with Article III of the United States Constitution; (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (iv) notice of the Motion and the opportunity for a hearing was sufficient under the circumstances. After due deliberation, the Court has determined that the relief requested in the Motion related to the KERP is in the best interests of the Debtors, their estates, and their creditors and good and sufficient cause having been shown, therefore;

**IT IS HEREBY ORDERED THAT:**

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's tax identification number, are: First Guaranty Mortgage Corporation (9575); and Maverick II Holdings, LLC (5621). The location of the corporate headquarters and the service address for First Guaranty Mortgage Corporation is 5800 Tennyson Parkway, Suite 450, Plano, TX 75024.

<sup>2</sup> A capitalized term used but not defined herein shall have the meaning ascribed to it in the Motion.

1. The Motion is GRANTED, as provided herein.
2. The terms of the Debtors' proposed KERP, attached hereto as Exhibit 1 are approved.
3. The Debtors are authorized, but not directed, to make any and all payments to the KERP Participants under the KERP if the applicable condition(s) for any such payments are met, as described in the Motion. For the avoidance of doubt, nothing prohibits the Debtors from having any particular KERP Participant change Tiers under the KERP, provided the total value of all KERP Payments are not increased.
4. The hearing to consider approval of the KEIP shall be held on August 11, 2022 at 2:00 p.m. (ET).
5. This Order shall be binding upon any successors and assigns of the Debtors, including any trustee appointed in these Chapter 11 Cases or in any superseding proceeding under chapter 7 of the Bankruptcy Code.
6. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of this Order.

**Exhibit 1 to Order****Key Employee Retention Plan**

<b>Term</b>	<b>Description</b>
<b>Defined Terms</b>	All capitalized terms, unless otherwise defined herein, shall have the same meaning as in the <i>Debtors' Motion for an Order (I) Approving Key Employee Incentive Plan (II) Approving Key Employee Retention Plan for Non-Insider Employees</i> (the " <u>Motion</u> ") filed by the Debtors.
<b>Participating Employees and Tiers</b>	The KERP Participants, listed in Exhibit A to the Imhoff Declaration, who will be divided into four KERP Tiers.
<b>Amount of KERP Bonus</b>	<p>A KERP Award is based upon a calculation that equals the higher amount of (i) the sum of any accrued potential Severance that may have been payable under the Company's informal, prepetition practice and an amount equal to unpaid accrued PTO or (ii) a percentage (a "<u>KERP Percentage</u>") of that KERP Participant's annual base salary, depending on the KERP Tier that the KERP Participant is placed (the "<u>KERP Percentage Award</u>").</p> <p>For the avoidance of doubt, in addition to the KERP Award, KERP Participants who remain through the Debtors' designated date of separation and who execute required waivers and releases will also receive payment in full of all accrued and unpaid PTO. However, all separate Severance benefits that may have otherwise existed are being terminated and will not be payable upon a KERP Participant's separation from employment. Moreover, if the KERP Participant voluntarily leaves employment prior to the Debtors' designated date of separation, or such KERP Participant is terminated for cause, that KERP Participant will forfeit the entire KERP Award and any PTO earned in relation to work performed prior to 180 days before the Petition Date (i.e., January 1, 2022) or earned within that 180 day period in excess of any available balance under the priority cap under § 507(a)(4) will be treated as a general unsecured claim.</p> <p>KERP Tier 1 will have a KERP Percentage of ■%; KERP Tier 2 will have a KERP Percentage of ■%; KERP Tier 3 will have a percentage of ■%; and KERP Tier 4 will have a KERP Percentage of ■%.</p> <p>Exhibit A to the Imhoff Declaration lists the KERP Participants by KERP Tier and their potential KERP Award.</p>
<b>Timing and Amount of Payments</b>	KERP Participants in KERP Tier 1 and Tier 2 will receive (subject to being eligible) up to two payments, (i), if they are employed after the September RIF, a KERP Retention Payment, representing 35% of the KERP Award, to be paid shortly after the September RIF, and (ii) a Final KERP Payment, representing 65% of their KERP Award, to be paid upon the earlier date of (a) confirmation of a

	<p>Plan, (b) the conversion of these Chapter 11 Cases to chapter 7 of the Bankruptcy Code, (c) termination of their employment with without cause, or (d) death or disability.</p> <p>KERP Participants in KERP Tier 3 and Tier 4 will receive one KERP Payment paid (subject to being eligible under the Programs) upon the earlier date of (i) the conversion of these Chapter 11 Cases to chapter 7 of the Bankruptcy Code, (ii) termination of their employment with without cause, or (iii) death or disability.</p>
<b>KERP Release and Other Claims</b>	<p>KERP Participants must sign all required documentation for the KERP Release and comply with same to receive and retain any KERP Payment. The KERP Release will release any and all claims that the KERP Participant has or may acquire against the Debtors related to their employment or termination of employment, whether arising pre or postpetition, including WARN liability or any claim to severance. KERP Payments will be in lieu of any compensation that is due or owing, except for accrued, ordinary course salary, commissions, production bonuses, and, subject to the terms described in the Motion and herein, PTO.</p>
<b>KERP Formula Maximum and the KERP Discretionary Pool</b>	<p>If every KERP Participant remains eligible until their requested termination date or to Plan confirmation, total payments under the KERP formula will be approximately \$1,418,300 (the “<u>KERP Formula Maximum</u>”). The KERP Formula Maximum, however, shall be reduced dollar for dollar based upon attrition due to termination for cause or resignation or an KERP Participant’s failure to timely execute a release.</p> <p>In addition to the KERP Formula Maximum, the KERP Program provides a discretionary pool of \$150,000 (the “<u>KERP Discretionary Pool</u>”). Amounts paid from the KERP Discretionary Pool are referred to as the “<u>KERP Pool Payments</u>” and each a “<u>KERP Pool Payment</u>”). KERP Pool Payments may be made at the discretion of Debtors’ management to active KERP Participants without the need of further creditor or Court approval.</p>
<b>Permitted Operating Disbursements</b>	<p>The KERP Payments are permitted Operating Disbursements.</p>
<b>Effect of Termination of Employment</b>	<p>In the event a KERP Participant voluntarily resigns or is terminated by the Debtor for cause, the KERP Participant will forfeit any right to a future KERP Payment and will disgorge any paid KERP Payment (“cause” means (i) failure to materially perform the duties for which they are employed, (ii) willful violation of a material policy of the Debtors, (iii) commission of any act or acts of fraud, embezzlement, dishonesty, or other willful misconduct, (iv) material breach of any of their obligations under any written agreement or covenant with the Debtors, or (v) an act of dishonesty resulting or intended to result, directly or indirectly, in their gain for personal enrichment at the expense of the Debtors.)</p>