

EXHIBIT “R”

EX-4.1 3 d473115_ex4-1.htm POOLING AND SERVICING AGREEMENT
BEAR STEARNS ASSET BACKED SECURITIES I LLC,

Depositor,

EMC MORTGAGE CORPORATION,

Sponsor and Company,

LASALLE BANK NATIONAL ASSOCIATION,

Master Servicer and Securities Administrator,

And

CITIBANK, N.A.

Trustee

POOLING AND SERVICING AGREEMENT

Dated as of March 1, 2006

BEAR STEARNS ASSET BACKED SECURITIES I TRUST 2006-HE3

ASSET-BACKED CERTIFICATES, SERIES 2006-HE3

ARTICLE VI

DISTRIBUTIONS AND ADVANCES

Section 6.01 Advances.

The Company shall make an Advance with respect to any EMC Mortgage Loan and deposit such Advance in the Master Servicer Collection Account no later than 1:00 p.m. Eastern time on the Remittance Date in immediately available funds. The Company or the related Servicer, as applicable, shall be obligated to make any such Advance only to the extent that such advance would not be a Nonrecoverable Advance. If the Company or the related Servicer shall have determined that it has made a Nonrecoverable Advance or that a proposed Advance or a lesser portion of such Advance would constitute a Nonrecoverable Advance, the Company or the related Servicer, as the case may be, shall deliver (i) to the Securities Administrator for the benefit of the Certificateholders constituting the remaining portion of such Advance, if applicable, and (ii) to the Depositor, the Master Servicer, each Rating Agency and the Trustee an Officer's Certificate setting forth the basis for such determination.

In lieu of making all or a portion of such Advance from its own funds, the Company may (i) cause to be made an appropriate entry in its records relating to the Protected Account that any Amounts Held for Future Distribution has been used by the Company in discharge of its obligation to make any such Advance and (ii) transfer such funds from the Protected Account to the Distribution Account. Any funds so applied and transferred shall be replaced by the Company by deposit in the Distribution Account, no later than the close of business on the Remittance Date immediately preceding the Distribution Account Deposit Date on which such funds are required to be distributed pursuant to this Agreement.

Each Servicer will discontinue such Advances with respect to any Mortgage Loan that becomes 90 days Delinquent; provided, however, if a Servicer reasonably determines that a significant net recovery is possible through foreclosure proceedings or other liquidation of the related Mortgaged Property on a Mortgage Loan that becomes 90 days delinquent, such Servicer may continue making advances on such Mortgage Loan. Subject to Section 3.12, a Servicer must effectuate foreclosure or other conversion of the ownership of the Mortgaged Property securing any Mortgage Loan at such time that the Mortgage Loan becomes 180 days Delinquent. Once a Servicer has commenced such proceedings, such Servicer will not be entitled to any additional Servicing Fee for such Mortgage Loan, except to the extent of any unreimbursed Servicing Fees and expenses which will be reimbursable from any Liquidation Proceeds.

The Company shall be entitled to be reimbursed from the Protected Account for all Advances of its own funds made pursuant to this Section as provided in Section 5.02; provided, however, such reimbursement shall be limited to funds received from Mortgage Loans for which such Advance was made. The obligation to make Advances with respect to any EMC Mortgage Loan shall continue until such EMC Mortgage Loan is paid in full or the related Mortgaged Property or related REO Property has been liquidated or until the purchase or repurchase thereof (or substitution thereof) from the Trust Fund pursuant to any applicable provision of this Agreement, except as otherwise provided in this Section 6.01.

(b) If the Scheduled Payment on a Mortgage Loan that was due on a related Due Date and is delinquent other than as a result of application of the Relief Act and for which the Company or the related Servicer was required to make an Advance pursuant to this Agreement or the related Servicing Agreement exceeds the amount deposited in the Master Servicer Collection Account which shall be used for an Advance with respect to such Mortgage Loan, the Master Servicer will deposit in the Master Servicer Collection Account not later than the Distribution Account Deposit Date immediately preceding the related Distribution Date an amount equal to such deficiency, net of the Master Servicing Fee and the Servicing Fee for such Mortgage Loan except to the extent the Master Servicer determines any such Advance to be nonrecoverable from Liquidation Proceeds, Insurance Proceeds or future payments on the Mortgage Loan for which such Advance was made. Subject to the foregoing, the Master Servicer shall continue to make such Advances through the date that the Company or the related Servicer is required to do so under this Agreement or the related Servicing Agreement, as applicable. If applicable, on the Distribution Account Deposit Date, the Master Servicer shall present an Officer's Certificate to the Trustee (i) stating that the Master Servicer elects not to make an Advance in a stated amount and (ii) detailing the reason it deems the advance to be nonrecoverable. The Master Servicer may rely on any non-recoverability determination of the Company or any Servicer.

Subject to and in accordance with the provisions of Article IX hereof, in the event the Master Servicer fails to make such Advance, then the Trustee, as Successor Master Servicer, shall be obligated to make such Advance, subject to the provisions of this Section 6.01.

Section 6.02 Compensating Interest Payments.

(a) In the event that there is a Prepayment Interest Shortfall arising from a voluntary Principal Prepayment in part or in full by the Mortgagor with respect to any EMC Mortgage Loan, the Company shall, to the extent of the Servicing Fee for such Distribution Date, remit to the Master Servicer for deposit into the Master Servicer Collection Account, as a reduction of the Servicing Fee for such Distribution Date, no later than the close of business on the Remittance Date immediately preceding such Distribution Date, an amount equal to the Prepayment Interest Shortfall; and in case of such deposit, the Company shall not be entitled to any recovery or reimbursement from the Depositor, the Trustee, the Sponsor, the Master Servicer, the Securities Administrator, the Trust Fund or the Certificateholders.

(b) The Master Servicer shall enforce the obligation of each Servicer under the related Servicing Agreement to remit any required Compensating Interest Payments to the Master Servicer Collection Account on the Remittance Date.

(c) The Master Servicer shall be required to remit to the Securities Administrator for deposit in the Distribution Account the amount of any Prepayment Interest Shortfalls, to the extent of the Master Servicing Compensation for such Distribution Date, in the event the Company or the related Servicer is required to make such payment but fails to do so.

Section 6.03 REMIC Distributions.

On each Distribution Date the Securities Administrator shall be deemed to have allocated distributions to the REMIC I Regular Interests, REMIC II Regular Interests, Class CE Interest, Class P Interest and Class IO Interest in accordance with Section 6.07 hereof.

Section 6.04 Distributions.

(a) Subject to Section 3.21(c), on each Distribution Date, an amount equal to the Interest Funds and Principal Funds for such Distribution Date shall be withdrawn by the Securities Administrator from the Distribution Account and distributed in the following order of priority:

(1) Interest Funds shall be distributed in the following manner and order of priority:

(A) to the Class A-1, Class A-2 and Class A-3 Certificates, the Current Interest and any Interest Carry Forward Amount for each such Class, on a *pro rata* basis based on the entitlement of each such Class; and

(B) From remaining Interest Funds, sequentially, to the Class M-1, Class M-2, Class M-3, Class M-4, Class M-5, Class M-6, Class M-7, Class M-8, Class M-9 and Class M-10 Certificates, in that order, the Current Interest for each such Class.

Any Excess Spread to the extent necessary to meet a level of overcollateralization equal to the Overcollateralization Target Amount will be the Extra Principal Distribution Amount and will be included as part of the Principal Distribution Amount. Any Remaining Excess Spread together with any Overcollateralization Release Amount will be applied as Excess Cashflow and distributed pursuant to clauses (3)(A) through (H) below.

On any Distribution Date, any Relief Act Interest Shortfalls and any Prepayment Interest Shortfalls to the extent not covered by Compensating Interest will be allocated as set forth in the definition of "Current Interest" herein.

(2) On each Distribution Date, the Principal Distribution Amount shall be distributed in the following manner and order of priority:

(A) For each Distribution Date (i) prior to the Stepdown Date or (ii) on which a Trigger Event is in effect:

- (i) To the Class A Certificates, the Principal Distribution Amount for such Distribution Date, sequentially, to the Class A-1, Class A-2 and Class A-3 Certificates, in that order, in each case until the Certificate Principal Balance thereof is reduced to zero;
- (ii) To the Class M-1 Certificates, from any remaining Principal Funds for such Distribution Date, until the Certificate Principal Balance thereof is reduced to zero;
- (iii) To the Class M-2 Certificates, from any remaining Principal Funds for such Distribution Date, until the Certificate Principal Balance thereof is reduced to zero;
- (iv) To the Class M-3 Certificates, from any remaining Principal Funds for such Distribution Date, until the Certificate Principal Balance thereof is reduced to zero;
- (v) To the Class M-4 Certificates, from any remaining Principal Funds for such Distribution Date, until the Certificate Principal Balance thereof is reduced to zero;
- (vi) To the Class M-5 Certificates, from any remaining Principal Funds for such Distribution Date, until the Certificate Principal Balance thereof is reduced to zero;
- (vii) To the Class M-6 Certificates, from any remaining Principal Funds for such Distribution Date, until the Certificate Principal Balance thereof is reduced to zero;
- (viii) To the Class M-7 Certificates, from any remaining Principal Funds for such Distribution Date, until the Certificate Principal Balance thereof is reduced to zero;
- (ix) To the Class M-8 Certificates, from any remaining Principal Funds for such Distribution Date, until the Certificate Principal Balance thereof is reduced to zero;
- (x) To the Class M-9 Certificates, from any remaining Principal Funds for such Distribution Date, until the Certificate Principal Balance thereof is reduced to zero; and
- (xi) To the Class M-10 Certificates, from any remaining Principal Funds for such Distribution Date, until the Certificate Principal Balance thereof is reduced to zero.

(B) For each Distribution Date on or after the Stepdown Date, so long as a Trigger Event is not in effect:

- (i) To the Class A Certificates, the Class A Principal Distribution Amount for such Distribution Date, sequentially, to the Class A-1, Class A-2 and Class A-3 Certificates, in that order, the Class A Principal Distribution Amount for such Distribution Date, in each case until the Certificate Principal Balance thereof is reduced to zero;
- (ii) To the Class M-1 Certificates, from any remaining Principal Distribution Amount for such Distribution Date, the Class M-1 Principal Distribution Amount, until the Certificate Principal Balance thereof is reduced to zero;
- (iii) To the Class M-2 Certificates, from any remaining Principal Distribution Amount for such Distribution Date, the Class M-2 Principal Distribution Amount, until the Certificate Principal Balance thereof is reduced to zero;
- (iv) To the Class M-3 Certificates, from any remaining Principal Distribution Amount for such Distribution Date, the Class M-3 Principal Distribution Amount, until the Certificate Principal Balance thereof is reduced to zero;
- (v) To the Class M-4 Certificates, from any remaining Principal Distribution Amount for such Distribution Date, the Class M-4 Principal Distribution Amount, until the Certificate Principal Balance thereof is reduced to zero;
- (vi) To the Class M-5 Certificates, from any remaining Principal Distribution Amount for such Distribution Date, the Class M-5 Principal Distribution Amount, until the Certificate Principal Balance thereof is reduced to zero;
- (vii) To the Class M-6 Certificates, from any remaining Principal Distribution Amount for such Distribution Date, the Class M-6 Principal Distribution Amount, until the Certificate Principal Balance thereof is reduced to zero;
- (viii) To the Class M-7 Certificates, from any remaining Principal Distribution Amount for such Distribution Date, the Class M-7 Principal Distribution Amount, until the Certificate Principal Balance thereof is reduced to zero;
- (ix) To the Class M-8 Certificates, from any remaining Principal Distribution Amount for such Distribution Date, the Class M-8 Principal Distribution Amount, until the Certificate Principal Balance thereof is reduced to zero;
- (x) To the Class M-9 Certificates, from any remaining Principal Distribution Amount for such Distribution Date, the Class M-9 Principal Distribution Amount, until the Certificate Principal Balance thereof is reduced to zero; and
- (xi) To the Class M-10 Certificates, from any remaining Principal Distribution Amount for such Distribution Date, the Class M-10 Principal Distribution Amount, until the Certificate Principal Balance thereof is reduced to zero.

(3) Any Excess Cashflow shall be distributed in the following manner and order of priority:

- (A) from any remaining Excess Cashflow, to the Class A Certificates, (a) first, any remaining Interest Carry Forward Amount for such Classes, *pro rata*, in accordance with the Interest Carry Forward Amount due with respect to each such Class, to the extent not fully paid pursuant to clause (1) (A) above and Section 3.21(d) and (b) second, any Unpaid Realized Loss Amount for such Classes for such Distribution Date, *pro rata*, in accordance with the Applied Realized Loss Amount allocated to each such Class;

(B) from any remaining Excess Cashflow, sequentially, to the Class M-1, Class M-2, Class M-3, Class M-4, Class M-5, Class M-6, Class M-7, Class M-8, Class M-9 and Class M-10 Certificates, in that order, an amount equal to the Interest Carry Forward Amount for each such Class for such Distribution Date to the extent not fully paid pursuant to Section 3.21(d);

(C) from any remaining Excess Cashflow otherwise distributable to the Class CE Interest and the Class CE Certificates, to the Reserve Fund, (i) first, to pay to the Classes of Class A Certificates, any Basis Risk Shortfall Carry Forward Amount for such Classes for such Distribution Date, on a *pro rata* basis, based on the amount of the Basis Risk Shortfall Carry Forward Amount for each such Class and to the extent not paid pursuant to Section 3.21(d) and to the extent such amount exceeds the amounts then on deposit in the Reserve Fund, and (ii) second, to maintain a balance in the Reserve Fund equal to the Reserve Fund Deposit;

(D) from any remaining Excess Cashflow otherwise distributable to the Class CE Interest and the Class CE Certificates, to the Reserve Fund, (i) first, to pay to the Class M-1, Class M-2, Class M-3, Class M-4, Class M-5, Class M-6, Class M-7, Class M-8, Class M-9 and Class M-10 Certificates, sequentially in that order, any Basis Risk Shortfall Carry Forward Amount for each such Class for such Distribution Date, if any, in each case to the extent not paid pursuant to Section 3.21(d) and to the extent such amount exceeds the amounts then on deposit in the Reserve Fund, and (ii) second, to maintain a balance in the Reserve Fund equal to the Reserve Fund Deposit;

(E) from any remaining Excess Cashflow, to the Class A Certificates, on a *pro rata* basis, based on the entitlement of each such Class, and then sequentially to the Class M-1, Class M-2, Class M-3, Class M-4, Class M-5, Class M-6, Class M-7, Class M-8, Class M-9 and Class M-10 Certificates, in that order, the amount of Relief Act Shortfalls and any Prepayment Interest Shortfalls allocated to such Classes of Certificates, to the extent not previously reimbursed;

(F) from any remaining Excess Cashflow, to the Derivative Administrator for payment to the Swap Provider, any Swap Termination Payments due to a Swap Provider Trigger Event owed by the Trust Fund (to the extent not paid by the Derivative Administrator from any upfront payment received pursuant to a replacement interest rate swap agreement that may be entered into by the Supplemental Interest Trust Trustee);

(G) from any remaining Excess Cashflow, to the Class CE Interest and Class CE Certificates, an amount equal to the Class CE Distribution Amount reduced by amounts distributed in clauses (C) and (D) above; and

(H) from any remaining Excess Cashflow, to each of the Class R-1, Class R-2, Class R-3 and Class RX Certificates, based on the related REMIC in which such amounts remain.

On each Distribution Date, all amounts in respect of Prepayment Charges shall be distributed to the Holders of the Class P Interest and the Class P Certificates, provided that such distributions shall not be in reduction of the principal balance thereof. On the Distribution Date immediately following the expiration of the latest Prepayment Charge term as identified on the Mortgage Loan Schedule, any amount on deposit in the Class P Certificate Account will be distributed to the Holders of the Class P Interest and the Class P Certificates in reduction of the Certificate Principal Balance thereof.

In addition, notwithstanding the foregoing, on any Distribution Date after the Distribution Date on which the Certificate Principal Balance of a Class of Class A Certificates or Class M Certificates has been reduced to zero, that Class of Certificates will be retired and will no longer be entitled to distributions, including distributions in respect of Prepayment Interest Shortfalls or Basis Risk Shortfall Carry Forward Amounts.

In addition, notwithstanding the foregoing clause (a)(2), to the extent a Class IO Distribution Amount is payable from principal collections, Principal Distribution Amounts will be deemed paid to the most subordinate Class of Regular Certificates, until the Certificate Principal Balance thereof has been reduced to zero, and such amount will be paid pursuant to Section 3.21(f).

(b) In addition to the foregoing distributions, with respect to any Subsequent Recoveries, the Company shall deposit such funds into the Protected Account pursuant to Section 5.01(b)(iii). If, after taking into account such Subsequent Recoveries, the amount of a Realized Loss is reduced, the amount of such Subsequent Recoveries will be applied to increase the Certificate Principal Balance of the Class of Certificates with the highest payment priority to which Realized Losses have been allocated, but not by more than the amount of Realized Losses previously allocated to that Class of Certificates pursuant to Section 6.05; provided, however, to the extent that no reductions to a Certificate Principal Balance of any Class of Certificates currently exists as the result of a prior allocation of a Realized Loss, such Subsequent Recoveries will be applied as Excess Spread. The amount of any remaining Subsequent Recoveries will be applied to increase the Certificate Principal Balance of the Class of Certificates with the next highest payment priority, up to the amount of such Realized Losses previously allocated to that Class of Certificates pursuant to Section 6.05, and so on. Holders of such Certificates will not be entitled to any payment in respect of Current Interest on the amount of such increases for any Interest Accrual Period preceding the Distribution Date on which such increase occurs. Any such increases shall be applied to the Certificate Principal Balance of each Certificate of such Class in accordance with its respective Percentage Interest.

(c) Subject to Section 11.02 hereof respecting the final distribution, on each Distribution Date the Securities Administrator shall make distributions to each Certificateholder of record on the preceding Record Date either by wire transfer in immediately available funds to the account of such Holder at a bank or other entity having appropriate facilities therefor, if such Holder has so notified the Securities Administrator at least 5 Business Days prior to the related Record Date, or, if not, by check mailed by first class mail to such Certificateholder at the address of such Holder appearing in the Certificate Register. Notwithstanding the foregoing, but subject to Section 11.02 hereof respecting the final distribution, distributions with respect to Certificates registered in the name of a Depository shall be made to such Depository in immediately available funds.

(d) On or before 5:00 p.m. Eastern time on the fifth Business Day immediately preceding each Distribution Date, the Master Servicer shall deliver the Remittance Report.

Section 6.05 Allocation of Realized Losses.

(a) All Realized Losses on the Mortgage Loans allocated to any REMIC II Regular Interest pursuant to Section 6.05(c) on the Mortgage Loans shall be allocated by the Securities Administrator on each Distribution Date as follows: first, to Excess Spread as part of the payment in respect of the Extra Principal Distribution Amount for such Distribution Date; second, to the Class CE Interest and Class CE Certificates, until the Certificate Principal Balance or Uncertificated Principal Balance thereof, as applicable, has been reduced to zero; third, to the Class M-10 Certificates, until the Certificate Principal Balance thereof has been reduced to zero; fourth, to the Class M-9 Certificates, until the Certificate Principal Balance thereof has been reduced to zero; fifth, to the Class M-8 Certificates, until the Certificate Principal Balance thereof has been reduced to zero; sixth, to the Class M-7 Certificates, until the Certificate Principal Balance thereof has been reduced to zero; seventh, to the Class M-6 Certificates, until the Certificate Principal Balance thereof has been reduced to zero; eighth, to the Class M-5 Certificates, until the Certificate Principal Balance thereof has been reduced to zero; ninth, to the Class M-4 Certificates, until the Certificate Principal Balance thereof has been reduced to zero; tenth, to the Class M-3 Certificates, until the Certificate Principal Balance thereof has been reduced to zero; eleventh, to the Class M-2 Certificates, until the Certificate Principal Balance thereof has been reduced to zero; twelfth, to the Class M-1 Certificates, until the Certificate Principal Balance thereof has been reduced to zero; and thirteenth, to the Class or Classes of Class A Certificates, on a *pro rata* basis, until the Certificate Principal Balances thereof have been reduced to zero. All Realized Losses to be allocated to the Certificate Principal Balances of all Classes on any Distribution Date shall be so allocated after the actual distributions to be made on such date as provided above. All references above to the Certificate Principal Balance of any Class of Certificates shall be to the Certificate Principal Balance of such Class immediately prior to the relevant Distribution Date, before reduction thereof by any Realized Losses, in each case to be allocated to such Class of Certificates, on such Distribution Date.

(b) Any allocation of Realized Losses to a Class of Certificates or to the Class CE Interest on any Distribution Date shall be made by reducing the Certificate Principal Balance or Uncertificated Principal Balance thereof by the amount so allocated; any allocation of Realized Losses to Excess Spread shall be made by reducing the amount otherwise payable in respect of the Class CE Interest and the Class CE Certificates pursuant to clause (G) of Section 6.04(a)(3). No allocations of any Realized Losses shall be made to the Certificate Principal Balance or Uncertificated Principal Balance, as applicable, of the Class P Interest and the Class P Certificates.

Notwithstanding the foregoing, no such allocation of any Realized Loss shall be made on a Distribution Date to any Class of Certificates to the extent that such allocation would result in the reduction of the aggregate Certificate Principal Balance of all the Certificates as of such Distribution Date, (other than the Class CE Certificates and Class P Certificates) after giving effect to all distributions and prior allocations of Realized Losses on the Mortgage Loans on such date, to an amount less than the aggregate Stated Principal Balance of all of the Mortgage Loans as of the first day of the month of such Distribution Date (such limitation, the "Loss Allocation Limitation"). In addition in no event will the Certificate Principal Balance of any Certificate be reduced more than once in respect of any particular amount both (i) allocable to such Certificate in respect of Realized Losses and (ii) payable as principal to the Holder of such Certificate from Remaining Excess Spread.