

# **EXHIBIT “O”**

EX-10.1 2 exhibit\_10-1.htm POOLING AND SERVICING AGREEMENT

Exhibit 10.1

STRUCTURED ASSET MORTGAGE INVESTMENTS II INC.  
DEPOSITOR

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
TRUSTEE

AND

EMC MORTGAGE CORPORATION  
SERVICER, SPONSOR AND COMPANY

POOLING AND SERVICING AGREEMENT

DATED AS OF OCTOBER 1, 2006

STRUCTURED ASSET MORTGAGE INVESTMENTS II INC.  
Bear Stearns Mortgage Funding Trust 2006-AR3  
Mortgage Pass-Through Certificates, Series 2006-AR3

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otherwise distributable to such Certificates on such Distribution Date and then any excess shall be allocated to each other Class of Certificates in the related Loan Group pro rata based on the respective amounts of interest accrued pursuant to clause (i) hereof for each such Class on such Distribution Date, (c) any Net Deferred Interest allocated to such Class, and (d) the interest portion of any Realized Losses on the related Mortgage Loans allocated to such Class in the manner as described herein and (2) with respect to the Grantor Trust Certificates, the sum of any shortfalls described in clauses (a), (b) and (d) herein, and to the extent the related Swap Agreement is terminated and no replacement swap agreement has been entered into, clause (c) herein, allocated to the related Class of Underlying Certificates.

**Current Principal Amount:** With respect to any Class of Offered Certificates (other than the Grantor Trust Certificates), the Underlying Certificates and the Class II-B-5 Certificates as of any Distribution Date, the initial principal amount of such Certificate plus the amount of any Net Deferred Interest allocated thereto on the related Distribution Date and all previous Distribution Dates plus any Subsequent Recoveries added to the Current Principal Amount of such Certificates pursuant to Section 6.02(h) hereof, and reduced by (i) all amounts distributed on previous Distribution Dates on such Certificate with respect to principal and (ii) any Applied Realized Loss Amounts allocated to such Class on previous Distribution Dates. With respect to any Class of Certificates, the Current Principal Amount thereof will equal the sum of the Current Principal Amounts of all Certificates in such Class. The initial Current Principal Amount for each Class of Certificates is set forth in Section 5.01(c)(iv). With respect to the Grantor Trust Certificates as of any Distribution Date, the Current Principal Amount thereof will equal the initial principal amount of such Certificate on the Closing Date, as reduced by (i) all amounts distributed on previous Distribution Dates on such Certificate with respect to principal and (ii) any Applied Realized Loss Amounts allocated to the related Class of Underlying Certificates on Previous Distribution Dates. To the extent the related Swap Agreement has been terminated and no replacement swap agreement has been entered into, the Current Principal Amount of the Grantor Trust Certificates will be increased by the amount of any Net Deferred Interest allocated to the related Class of Underlying Certificates.

**Curtailement:** Any Principal Prepayment made by a Mortgagor which is not a Principal Prepayment in full.

**Custodial Account:** The trust account or accounts created and maintained by the Servicer pursuant to Section 4.01, which shall be denominated "Wells Fargo Bank, National Association, as Trustee f/b/o holders of Structured Asset Mortgage Investments II Inc., Bear Stearns Mortgage Funding Trust 2006-AR3, Mortgage Pass-Through Certificates, Series 2006-AR3, Custodial Account." The Custodial Account shall be an Eligible Account.

**Custodial Agreement:** An agreement, dated as of the Closing Date among the Depositor, the Servicer, the Trustee and the Custodian in substantially the form of Exhibit G hereto.

**Custodian:** Wells Fargo Bank, National Association, or any successor custodian appointed pursuant to the provisions hereof and of the Custodial Agreement.

**Cut-off Date:** October 1, 2006.

**Cut-off Date Balance:** \$811,440,974.74.

**Deferred Interest:** The amount of accrued interest on the Mortgage Loans, the payment of which is deferred and added to the Outstanding Principal Balance of a Mortgage Loan due to negative amortization on such Mortgage Loan.

**Deficient Valuation:** A Bankruptcy Loss that results if a court, in connection with a personal bankruptcy of a Mortgagor, establishes the value of a Mortgaged Property at an amount less than the unpaid principal balance of the Mortgage Loan secured by such Mortgaged Property.

**Delinquency Recognition Policies:** The generally accepted industry standard that defines the proper means of reporting delinquency status when a loan is determined to be delinquent if the payment is not received by the end of the day immediately preceding the loan's next due date.

**Delinquency Test Violation:** A Group I Delinquency Test Violation or a Group II Delinquency Test Violation, as applicable.

**Delinquent:** A Mortgage Loan is "Delinquent" if any payment due thereon is not made pursuant to the terms of such Mortgage Loan by the close of business on the day such payment is scheduled to be due. A Mortgage Loan is "30 days delinquent" if such payment has not been received by the close of business on the last day of the month immediately succeeding the month in which such payment was due. For example, a Mortgage Loan with a payment due on December 1 that remained unpaid as of the close of business on January 31 would then be considered to be 30 to 59 days delinquent. Similarly for "60 days delinquent," "90 days delinquent" and so on.

**Depositor:** Structured Asset Mortgage Investments II Inc., a Delaware corporation, or its successors in interest.

**Depository:** The Depository Trust Company, the nominee of which is Cede & Co., or any successor thereto.

**Depository Agreement:** The meaning specified in Section 5.01(a) hereof.

**Depository Participant:** A broker, dealer, bank or other financial institution or other Person for whom from time to time the Depository effects book-entry transfers and pledges of securities deposited with the Depository.

**Designated Depository Institution:** A depository institution (commercial bank, federal savings bank, mutual savings bank or savings and loan association) or trust company (which may include the Trustee), the deposits of which are fully insured by the FDIC to the extent provided by law.

**Determination Date:** The 15th day (or if such 15th day is not a Business Day, the Business Day immediately preceding such 15th day) of the month of the Distribution Date.

**Disqualified Organization:** Any of the following: (i) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing (other than an instrumentality which is a corporation if all of its activities are subject to tax and, except for the Freddie Mac or any successor thereto, a majority of its board of directors is not selected by such governmental unit), (ii) any foreign government, any international organization, or any agency or instrumentality of any of the foregoing, (iii) any organization (other than certain farmers' cooperatives described in Section 521 of the Code) which is exempt from the tax imposed by Chapter 1 of the Code (including the tax imposed by Section 511 of the Code on unrelated business taxable income), (iv) rural electric and telephone cooperatives described in