EXHIBIT 10.4  
  
 PLEDGE AGREEMENT REGARDING CONTINGENT PAYMENT NOTE  
  
 This PLEDGE AGREEMENT REGARDING CONTINGENT PAYMENT NOTE (this  
"Agreement"), dated as of June 20, 2006, is executed and delivered by and among  
USG CORPORATION, a Delaware corporation (the "Company"), and the parties set  
forth on the signature pages hereto listed as and acting in their capacities as  
an Asbestos Personal Injury Trustee under and as defined in the Plan (as defined  
below) (together, in each case, with its successors and assigns, if any, in such  
capacity, individually and collectively being referred to herein as the  
"Trustee") for the Trust (as defined below), with reference to the following:  
  
 WHEREAS, each of the entities listed on Schedule I hereto  
(collectively, the "Makers" and each, a "Maker"), has executed and delivered  
that certain Contingent Non-Negotiable Promissory Note, dated as of the date  
hereof in the original principal amount of Three Billion, Fifty Million Dollars  
($3,050,000,000) (the "Note") in favor of the United States Gypsum Asbestos  
Personal Injury Settlement Trust (the "Trust"); and  
  
 WHEREAS, under the terms of the Joint Plan of Reorganization of the  
Makers, filed with the United States Bankruptcy Court for the District of  
Delaware on April 5, 2006 (as amended from time to time, the "Plan"), it is a  
condition precedent to the emergence of the Makers from bankruptcy protection  
that the Company agree to pledge to the Trust the Pledged Collateral (as defined  
below), subject to the terms and conditions of this Agreement, to secure payment  
of the Note;  
  
 NOW, THEREFORE, in consideration of the mutual promises, covenants,  
representations, and warranties set forth herein and for other good and valuable  
consideration, the parties hereto agree as follows:  
  
 Definitions And Construction.  
  
 Section 1. Definitions. All capitalized terms used herein (including,  
without limitation, in the preamble and recitals hereof) without definition  
shall have the meanings ascribed thereto in the Plan. The following terms, as  
used in this Agreement, shall have the following meanings:  
  
 "Agreement" has the meaning set forth in the preamble to this  
Agreement.  
  
 "Company" has the meaning set forth in the preamble to this Agreement.  
  
 "Equity Interests" means the common stock (other than treasury stock)  
of the Company.  
  
 "Event of Default" means the occurrence and continuance of a payment  
default pursuant to section 3(a)(i) of the Note beyond the expiration of the  
cure period thereunder.  
  
  
  
 "Paid in Full" means the payment in full in cash of all Secured  
Obligations (other than unasserted contingent and indemnification obligations).  
  
 "Pledge" has the meaning set forth in Section 2 below.  
  
 "Pledged Collateral" means the Pledged Interests and the Proceeds,  
collectively.  
  
 "Pledged Interests" means the authorized but unissued Equity Interests  
of the Company that would, upon issuance, constitute that amount of Equity  
Interests that would entitle the Trust to 51% of the aggregate voting power of  
all such outstanding Equity Interests of the Company on a fully diluted basis  
(taking into account the Equity Interests of the Company issued and outstanding  
immediately previous to such issuance, plus the Equity Interests to be issued  
and pledged pursuant to Section 2 of this Agreement), as of the date that the  
Trust demands the Pledge in accordance with the terms of the Plan, the Note and  
this Agreement.  
  
 "Proceeds" means all proceeds (including proceeds of proceeds) of the  
Pledged Interests including, without duplication, all: (a) rights, benefits,  
distributions, premiums, profits, dividends, interest, cash, instruments,  
documents of title, accounts, contract rights, inventory, equipment, general  
intangibles, deposit accounts, chattel paper, and other property from time to  
time thereafter received, receivable, or otherwise distributed in respect of or  
in exchange for, or as a replacement of or a substitution for, any of the  
Pledged Collateral, or proceeds thereof (including any cash, Equity Interests,  
or other securities or instruments issued after any recapitalization,  
readjustment, reclassification, merger or consolidation with respect to the  
Company and any security entitlements, as defined in the UCC with respect  
thereto) and (b) "proceeds," as such term is defined in the UCC.  
  
 "Secured Obligations" means all payment obligations set forth in  
section 1(a) of the Note.  
  
 "UCC" means the Delaware Uniform Commercial Code, as in effect from  
time to time; provided, however, that in the event that, by reason of mandatory  
provisions of law, any or all of the attachment, perfection, priority, or  
remedies with respect to the Trustee's lien on any Pledged Collateral is  
governed by the Uniform Commercial Code as enacted and in effect in a  
jurisdiction other than the State of Delaware, the term "UCC" shall mean the  
Uniform Commercial Code as enacted and in effect in such other jurisdiction  
solely for purposes of the provisions thereof relating to such attachment,  
perfection, priority, or remedies.  
  
 Unless the context of this Agreement clearly requires otherwise,  
references to the plural include the singular and to the singular include the  
plural, the part includes the whole, the term "including" is not limiting, and  
the term "or" has, except where otherwise indicated, the inclusive meaning  
represented by the phrase "and/or." The words "hereof," "herein," "hereby,"  
"hereunder," and other similar terms in this Agreement refer to this Agreement  
as a whole and not exclusively to any particular provision of this Agreement.  
Article, section, subsection, exhibit, and schedule references are to this  
Agreement unless otherwise specified. All of the exhibits or schedules attached  
to this Agreement shall be deemed incorporated herein by reference. Any  
reference to this Agreement includes any and all permitted alterations,  
  
  
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amendments, restatements, extensions, modifications, renewals, or supplements  
thereto or thereof, as applicable.  
  
 Neither this Agreement nor any uncertainty or ambiguity herein shall  
be construed or resolved against the Trustee or the Company, whether under any  
rule of construction or otherwise. On the contrary, this Agreement has been  
reviewed by each of the parties signatory hereto and their respective counsel  
and shall be construed and interpreted according to the ordinary meaning of the  
words used so as to fairly accomplish the purposes and intentions of the parties  
hereto.  
  
 Section 2. Agreement to Issue and Pledge. The Company hereby agrees,  
upon (a) the occurrence and during the continuance of an Event of Default and  
(b) the subsequent demand of the Trust in writing in accordance with the terms  
of the Note and the Plan, to take all necessary action to issue the Pledged  
Interests in the name of the Company, and, upon its issuance, to hypothecate,  
pledge, grant, transfer, and collaterally assign to the Trustee, for the benefit  
of the Trust, a security interest in all of the Company's then owned and  
thereafter acquired right, title, and interest in and to the Pledged Collateral  
(such hypothecation, pledge, grant, transfer, and collateral assignment is  
herein referred to as the "Pledge").  
  
 Section 3. Security for Secured Obligations. Upon the occurrence of  
the Pledge, such Pledged Collateral shall secure the prompt repayment of any and  
all of the Secured Obligations in accordance with the provisions hereof and the  
Note as described in the Plan (whether at the stated maturity, by acceleration  
or otherwise).  
  
 Section 4. Delivery and Registration of Pledged Collateral. Upon the  
effectiveness of the Pledge:  
  
 (a) all certificates or instruments representing or evidencing the  
Pledged Collateral, if any, shall be promptly delivered by the Company to the  
Trustee and shall be held by or on behalf of the Trustee pursuant hereto, and  
shall be in suitable form for transfer by delivery, or shall be accompanied by  
duly executed instruments of transfer or assignments in blank, all in form and  
substance reasonably satisfactory to the Trustee;  
  
 (b) any and all Pledged Collateral (including dividends, interest, and  
other cash distributions) at any time received or held by the Company in  
contravention of terms of this Agreement, shall be so received or held in trust  
for the Trustee, shall be segregated from other funds and property of the  
Company and shall forthwith be delivered to the Trustee in the same form as so  
received or held, with any necessary endorsements; and  
  
 (c) if at any time and from time to time any Pledged Collateral  
consists of an uncertificated security or a security in book entry form, then  
the Company, at its expense, shall promptly cause such Pledged Collateral to be  
registered or entered, as the case may be, in the name of the Trustee, for the  
benefit of the Trust, or otherwise cause the security interest held by the  
Trustee for the benefit of the Trust, to be perfected in accordance with  
applicable law.  
  
 Section 5. Representations and Warranties. The Company represents and  
warrants as follows:  
  
  
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 (a) the Company is duly incorporated, validly existing and in good  
standing under the laws of the jurisdiction of its organization and has full  
corporate power and authority to execute and deliver this Agreement;  
  
 (b) the execution and delivery by the Company of this Agreement has  
been duly authorized by all necessary corporate action on its part; and  
  
 (c) this Agreement constitutes a legal, valid and binding obligation  
of the Company, enforceable against it in accordance with the terms hereof,  
except as such enforceability may be limited by: (i) bankruptcy, insolvency,  
reorganization, fraudulent transfer or conveyance and other laws of general  
applicability relating to or affecting creditors' rights and (ii) general  
principles of equity (regardless of whether such enforceability is considered in  
a proceeding in equity or at law).  
  
 Section 6. Further Assurances. From and after the Pledge,  
  
 (a) the Company agrees that from time to time, at its own expense, it  
will promptly execute and deliver all further instruments and documents, and  
take all further action that may be necessary, or that the Trustee may  
reasonably request, in order to protect the security interest granted hereby or  
to enable the Trustee to exercise and enforce its rights and remedies hereunder  
with respect to any Pledged Collateral. Without limiting the generality of the  
foregoing, the Company will: (i) at the request of the Trustee, xxxx  
conspicuously each of its records pertaining to the Pledged Collateral with a  
legend, in form and substance reasonably satisfactory to the Trustee, indicating  
that such Pledged Collateral is subject to the security interest granted hereby;  
(ii) authorize, execute, or file such financing or continuation statements, or  
amendments thereto, and such other instruments or notices, as may be necessary,  
or as the Trustee may reasonably request, in order to preserve the security  
interests granted hereby; and (iii) appear in and defend any action or  
proceeding that may affect the Trustee's interest in the Pledged Collateral; and  
  
 (b) the Company authorizes the Trustee, on behalf of the Trust, to  
file one or more financing or continuation statements, and amendments thereto,  
relative to all or any part of the Pledged Collateral without the signature of  
the Company where permitted by law. A carbon, photographic, or other  
reproduction of this Agreement or any financing statement covering the Pledged  
Collateral or any part thereof shall be sufficient as a financing statement  
where permitted by law.  
  
 Section 7. Covenants of the Company. Until the Secured Obligations are  
Paid in Full, the Company shall:  
  
 (a) take such actions as are necessary to ensure that it maintains at  
all times Equity Interests that are authorized but unissued in an amount  
adequate to fulfill its obligations hereunder, and that no conditions precedent  
to the issuance of such Pledged Collateral shall exist, except as set forth  
herein;  
  
 (b) at all times keep at least one complete set of its records  
concerning the Pledged Collateral;  
  
  
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 (c) from and after the Pledge, at its expense, promptly execute,  
acknowledge and deliver all such instruments and take all such actions as the  
Trustee from time to time may request in order to ensure to the Trustee the  
benefits of the liens in and to the Pledged Collateral created by this  
Agreement, including the filing of any necessary financing statements, which may  
be filed by the Trustee, and will cooperate with the Trustee at the Company's  
expense, in obtaining all necessary approvals and making all necessary filings  
under federal, state, local or foreign law in connection with such liens or any  
sale or transfer of the Pledged Collateral;  
  
 (d) from and after the Pledge, defend the liens of the Trustee in the  
Pledged Collateral against the claim of any Entity and will maintain and  
preserve such liens, except with respect to actions affirmatively taken by the  
Trustee with respect to its liens or any failure of the Trustee to continue any  
lien prior to the lapse thereof.  
  
 Section 8. Legending of Certificates; No Registration Rights. Each of  
the Trustee and the Company agrees that, from and after the Pledge,  
  
 (a) any certificate or other writing evidencing the Pledged Collateral  
that is issued by the Company in the name of the Trustee or otherwise in favor  
of the Trust or the Trustee pursuant to Section 9 hereof shall bear the  
following legend:  
  
THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS  
AMENDED OR APPLICABLE STATE SECURITIES LAWS. NO INTEREST IN THIS CERTIFICATE MAY  
BE SOLD, DISTRIBUTED, ASSIGNED, OFFERED, PLEDGED OR OTHERWISE TRANSFERRED UNLESS  
(A) THE COMPANY RECEIVES AN OPINION OF LEGAL COUNSEL FOR THE HOLDER OF THIS  
CERTIFICATE SATISFACTORY TO THE COMPANY STATING THAT SUCH TRANSACTION IS EXEMPT  
FROM REGISTRATION OR (B) THE COMPANY OTHERWISE SATISFIES ITSELF THAT SUCH  
TRANSACTION IS EXEMPT FROM REGISTRATION; and  
  
 (b) the Trustee agrees and acknowledges that none of the Trust, the  
Trustee or any other holder of any of the Note or any certificate or other  
writing evidencing the Pledged Collateral, or any rights relating thereto, shall  
have any rights to require the Company to register the Note or such certificate  
or other writing, or any rights related thereto, with respect to the Pledged  
Collateral, under the Securities Act of 1933, as amended, or pursuant to any  
applicable state securities laws.  
  
 Section 9. Remedies upon Default. From and after the Pledge, upon the  
occurrence and during the continuance of an Event of Default:  
  
 (a) At any time upon ten (10) Business Days prior written notice to  
the Company, the Trustee (personally or through an agent) may, to the maximum  
extent permitted by applicable law, (i) transfer and register in its name or in  
the name of its nominee the whole or any part of the Pledged Collateral, (ii)  
exchange certificates or instruments representing or evidencing Pledged  
Collateral for certificates or instruments of smaller or larger denominations,  
(iii) exercise the voting and all other rights as an equity holder with respect  
to the Pledged Collateral, including without limitation all rights under  
applicable law, (iv) collect and receive all  
  
  
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cash dividends and distributions made with respect to the Pledged Collateral  
(including any sums paid or distributions made upon or in respect of the Equity  
Interests (A) upon the liquidation or dissolution of the Company, and (B) on or  
in respect of the Equity Interests or any property distributed upon or with  
respect to the Equity Interests pursuant to the recapitalization or  
reclassification of the capital of the Company or pursuant to the reorganization  
thereof) and make application thereof to the Secured Obligations and (v)  
otherwise act with respect to the Pledged Collateral as though the Trustee was  
the outright owner thereof, including, without limitation, take any action,  
exercise any right or receive any benefit under applicable law.  
  
 (b) The Trustee, on behalf of the Trust, may exercise in respect of  
the Pledged Collateral, in addition to other rights and remedies provided for  
herein or otherwise available to it, all the rights and remedies of a secured  
party under the UCC and all other applicable laws upon the occurrence and  
continuance of an Event of Default hereunder (irrespective of whether the UCC  
applies to the affected items of Pledged Collateral), and the Trustee, on behalf  
of the Trust, may also, subject to the terms of Section 8, to the extent  
permitted by law, sell the Pledged Collateral or any part thereof in one or more  
parcels at private sale, for cash, on credit or for future delivery, at such  
time or times and at such price or prices and upon such other terms as the  
Trustee may deem commercially reasonable. To the maximum extent permitted by  
applicable law, the Trustee may be the purchaser of any or all of the Pledged  
Collateral at any such sale and shall be entitled, to use and apply all or any  
part of the Secured Obligations as a credit on account of the purchase price of  
any Pledged Collateral payable at such sale. Each purchaser at any such sale  
shall hold the property sold free, subject to Section 8 above, from any claim or  
right on the part of the Company. The Company agrees that, to the extent notice  
of sale shall be required by law, at least ten (10) calendar days written notice  
to the Company of the time and place of any public sale or the time after which  
a private sale is to be made shall constitute reasonable notification. The  
Trustee shall not be obligated to make any sale of Pledged Collateral regardless  
of notice of sale having been given. The Trustee may adjourn any private sale  
from time to time by announcement at the time and place fixed therefor, and such  
sale may, without further notice, be made at the time and place to which it was  
so adjourned.  
  
 Section 10. Duties of the Trustee. The powers conferred on the Trustee  
hereunder are solely to protect its interests in the Pledged Collateral and  
shall not impose on it any duty to exercise such powers. Except as provided in  
Section 9-207 of the UCC, and under Section 8 above, the Trustee shall have no  
duty with respect to the Pledged Collateral or any responsibility for taking any  
necessary steps to preserve rights against any Entities with respect to any  
Pledged Collateral.  
  
 Section 11. Choice of Law and Venue. THE VALIDITY OF THIS AGREEMENT,  
ITS CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT, AND THE RIGHTS OF THE PARTIES  
HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH  
THE LAWS OF THE STATE OF DELAWARE. THE PARTIES AGREE THAT ALL ACTIONS OR  
PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND  
LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW  
CASTLE, STATE OF DELAWARE. THE COMPANY AND THE TRUSTEE WAIVE, TO THE EXTENT  
PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE  
OF FORUM NON COVENIENS  
  
  
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OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH  
THIS SECTION 11.  
  
 Section 12. Amendments; Etc. No amendment or waiver of any provision  
of this Agreement nor consent to any departure by the Company herefrom shall in  
any event be effective unless the same shall be in writing and signed by the  
Trustee and the Company, and then such waiver or consent shall be effective only  
in the specific instance and for the specific purpose for which given. No  
failure on the part of the Trustee to exercise, and no delay in exercising any  
right under this Agreement, the Note, or otherwise with respect to any of the  
Secured Obligations, shall operate as a waiver thereof; nor shall any single or  
partial exercise of any right under this Agreement, the Note, or otherwise with  
respect to any of the Secured Obligations preclude any other or further exercise  
thereof or the exercise of any other right. The remedies provided for in this  
Agreement or otherwise with respect to any of the Secured Obligations are  
cumulative and not exclusive of any remedies provided by law.  
  
 Section 13. Successors; Assigns. This Agreement shall be binding upon  
the Company, the Trustee and their respective successors and assigns, and shall  
inure to the benefit of the Company, the Trust and the Trustee and the  
successors and assigns of the Trust and the Trustee. No other Entity shall be a  
direct or indirect legal beneficiary of, or have any direct or indirect cause of  
action or claim in connection with, this Agreement or the Note. The Company may  
not assign or transfer any of its rights or Secured Obligations under this  
Agreement without the prior written consent of the Trustee and the Trustee may  
not assign or transfer any of its rights or obligations under this Agreement  
without the prior written consent of the Company.  
  
 Section 14. Notices. All notices and other communications provided for  
hereunder shall be given in the form and manner and delivered to Trustee or to  
the Company, as applicable, at its address specified in the Note, or, as to any  
party, at such other address as shall be designated by such party in a written  
notice to the other party.  
  
 Section 15. Continuing Security Interest. Upon the effectiveness of  
the Pledge, this Agreement shall create a security interest in the Pledged  
Collateral and shall remain in full force and effect until the Secured  
Obligations are Paid in Full. At such time the Secured Obligations are Paid in  
Full, the security interests granted upon the effectiveness of the Pledge shall  
automatically terminate and all rights to the Pledged Collateral shall revert to  
the Company. Upon any such termination, the Trustee will, at the Company's  
expense, execute and deliver to the Company such documents as the Company shall  
reasonably request to evidence such termination and promptly deliver any Pledged  
Collateral in its possession to the Company. Such documents shall be prepared by  
the Company and shall be in form and substance reasonably satisfactory to the  
Trustee.  
  
 Section 16. Security Interest Absolute. To the maximum extent  
permitted by law, all rights of the Trustee, all security interests hereunder,  
and all obligations of the Company hereunder, shall, upon the effectiveness of  
the Pledge, in accordance with the terms hereof, be absolute and unconditional  
irrespective of:  
  
 (a) any change in the time, manner or place of payment of, or in any  
 other term of, all or any part of the Secured Obligations, or any other  
 amendment or waiver of  
  
  
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 or any consent to any departure from the Note, the Plan or any other  
 agreement or instrument governing or evidencing any Secured Obligations;  
  
 (b) any exchange, release, or non-perfection of any other collateral,  
 or any release or amendment or waiver of or consent to departure from any  
 guaranty for all or any of the Secured Obligations;  
  
 (c) the insolvency of any Maker; or  
  
 (d) any other circumstances that might otherwise constitute a defense  
 available to, or a discharge of, the Company, other than payment in full of  
 the Secured Obligations.  
  
 Section 17. Acknowledgements.  
  
 (a) The Company and the Trustee hereby acknowledge that they have been  
advised by counsel in the negotiation, execution and delivery of this Agreement.  
  
 (b) The Company hereby acknowledges that:  
  
 (i) neither the Trustee nor the Trust has any fiduciary  
 relationship with or duty to the Company arising out of or in  
 connection with this Agreement or the Note, and the relationship  
 between the Company, on the one hand, and the Trustee and the Trust,  
 on the other hand, in connection herewith or therewith is solely that  
 of debtor and creditor; and  
  
 (ii) no joint venture is created hereby or otherwise exists by  
 virtue of the transactions contemplated hereby among the Company and  
 the Trust or the Trustee on behalf of the Trust.  
  
 Section 18. Headings. Section and subsection headings in this  
Agreement are included herein for convenience of reference only and shall not  
constitute a part of this Agreement or be given any substantive effect.  
  
 Section 19. Severability. In case any provision in or obligation under  
this Agreement shall be invalid, illegal or unenforceable in any jurisdiction,  
the validity, legality and enforceability of the remaining provisions or  
obligations, or of such provision or obligation in any other jurisdiction, shall  
not in any way be affected or impaired thereby.  
  
 Section 20. Counterparts; Telefacsimile Execution. This Agreement may  
be executed in one or more counterparts, each of which shall be deemed an  
original and all of which together shall constitute one and the same Agreement.  
Delivery of an executed counterpart of this Agreement by telefacsimile shall be  
equally as effective as delivery of an original executed counterpart of this  
Agreement. Any party delivering an executed counterpart of this Agreement by  
telefacsimile also shall deliver an original executed counterpart of this  
Agreement but the failure to deliver an original executed counterpart shall not  
affect the validity, enforceability, or binding effect hereof.  
  
  
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 Section 21. Waiver of Jury Trial. THE COMPANY AND THE TRUSTEE HEREBY  
WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION  
BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS  
CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY  
CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. THE COMPANY AND THE  
TRUSTEE REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND  
VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL  
COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A  
WRITTEN CONSENT TO A TRIAL BY THE COURT.  
  
 [Remainder of page intentionally left blank]  
  
  
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 IN WITNESS WHEREOF, the Company and the Trustee have caused this  
Agreement to be duly executed and delivered as of the date first written above.  
  
 USG CORPORATION,  
 a Delaware corporation  
  
  
 By: /s/ Xxxxxxx X. Xxxxxxx  
 ------------------------------------  
 Name: Xxxxxxx X. Xxxxxxx  
 Title: Executive Vice President & Chief  
 Financial Officer  
  
 [Signature Page to Contingent Note Pledge Agreement]  
  
  
  
  
 /s/ Xxxxxx X. Xxxxxxxx  
 ----------------------------------------  
 Xxxxxx X. Xxxxxxxx  
 Trustee  
  
  
 /s/ Xxxxx X. Xxxxxxx  
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 Xxxxx X. Xxxxxxx  
 Trustee  
  
  
 /s/ Xxxxxx X. Xxxxx  
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 Xxxxxx X. Xxxxx  
 Trustee  
  
 [Signature Page to Contingent Note Pledge Agreement]