# FIRST AMENDMENT TO LOAN AGREEMENT

by and between

**GUNNISON COUNTY, COLORADO**

and

**WESTERN STATE COLORADO UNIVERSITY FOUNDATION**

Relating to the reissuance of the following bond:

$5,220,537.53
Gunnison County, Colorado
Revenue Refunding Bond
(Western State Colorado University Foundation Project)
Series 2012A (*2015 Reissuance*)

Dated as of June 1, 2015

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# FIRST AMENDMENT TO LOAN AGREEMENT

**THIS FIRST AMENDMENT TO LOAN AGREEMENT** (this "First Amendment to Loan Agreement"), dated as of June 1, 2015, is made and entered into by and between **GUNNISON COUNTY, COLORADO**, a body corporate and politic duly organized and existing under the laws and constitution of the State of Colorado (the "Issuer"), and **WESTERN STATE COLORADO UNIVERSITY FOUNDATION**, formerly known as the Western State College Foundation, a Colorado nonprofit corporation (the "Borrower"), and its successors and assigns, under the circumstances summarized in the following recitals:

**W I T N E S S E T H :**

WHEREAS, the $6,023,043.37 Gunnison County, Colorado Revenue Refunding Bond (Western State College Foundation Project), Series 2012A (the "Original Series 2012A Bond") and the $1,481,069.41 Gunnison County, Colorado Revenue Refunding Bond (Western State College Foundation Project) Series 2012B (the "Original Series 2012B Bond") were previously issued pursuant to the terms of an Indenture of Trust, dated as of April 1, 2012 (the "Original Indenture"), by and between the Issuer and Wells Fargo Bank, National Association, as trustee (the "Trustee"); and

WHEREAS, proceeds of the Original Series 2012A Bond and the Original Series 2012B Bond were loaned to the Western State Colorado University Foundation (formerly known as the Western State College Foundation and referred to herein as the "Borrower") upon the terms and conditions set forth in the Loan Agreement, dated as of April 1, 2012 (the "Original Loan Agreement"), by and between the Issuer and the Borrower; and

WHEREAS, the Original Series 2012B Bond matured on August 15, 2013 and is no longer Outstanding; and

WHEREAS, Wells Fargo Bank, National Association is the Purchaser and current Holder (as defined in the Original Indenture) of 100% of the Original Series 2012A Bond; and

WHEREAS, the Borrower has requested that the Issuer amend and supplement the Original Indenture and the Original Loan Agreement to make certain modifications to those documents and amend certain terms of the Original Series 2012A Bond, and such amendments will cause the Original Series 2012A Bond to be deemed reissued pursuant to the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Holder has acknowledged and consented to this First Amendment to Loan Agreement, dated as of June 1, 2015, by and between the Issuer and the Borrower (this "First Amendment to Loan Agreement" and together with the Original Loan Agreement, the "Loan Agreement"); and a First Supplemental Indenture of Trust, dated as of June 1, 2015, by and between the Issuer and the Trustee (the "First Supplemental Indenture" and together with the Original Indenture, the "Indenture"); and

WHEREAS, in connection with the execution and delivery of the First Supplemental Indenture and this First Amendment to Loan Agreement, the Issuer shall execute and deliver a

new "Gunnison County, Colorado Revenue Refunding Bond (Western State Colorado University Foundation Project), Series 2012A (*2015 Reissuance*)" (as amended, the "Series 2012A Bond" or the "Series 2012A Bonds") in the principal amount of $5,220,537.53 in the form set forth in Section 2.03 of the First Supplemental Indenture; and

WHEREAS, in connection with the execution and delivery of this First Amendment to Loan Agreement, the parties hereto shall take all action necessary to effectuate the reissuance of the Series 2012A Bond; and

WHEREAS, all acts, conditions and things required by the Original Loan Agreement and by law to exist, to have happened, and to have been performed precedent to and in connection with the execution and entering into of this First Amendment to Loan Agreement do exist, have happened and have been performed in regular and due time, form and manner, and the parties hereto are now duly authorized to execute and enter into this First Amendment to Loan Agreement; and

WHEREAS, terms used but not defined herein shall have the meanings given to them in the Original Indenture and the Original Loan Agreement; and

NOW, THEREFORE, the Issuer and the Borrower, each in consideration of the representations, warranties, covenants and agreements of the other as set forth herein, mutually represent, warrant, covenant and agree to amend the Original Loan Agreement as follows:

## ARTICLE I

## AUTHORITY AND PURPOSE

**Section 1.01. Approval of First Amendment to Loan Agreement**. The parties hereto hereby approve the execution and delivery of this First Amendment to Loan Agreement under authority of and in accordance with Section 12.06 of the Original Loan Agreement.

**Section 1.02. Approval of First Supplemental Indenture and Reissuance Documents**. The Borrower hereby approves of the execution and delivery by the Issuer and the Trustee of the First Supplemental Indenture and the amendments authorized therein. The Borrower and the Issuer hereby approve of the execution and delivery of the amended Promissory Note, Tax Agreement, Continuing Covenant Agreement, Deed of Trust, Leasehold Deed of Trust (each as defined below) and all other security documents and closing documents necessary for the reissuance of the Series 2012A Bond.

## ARTICLE II

## AMENDMENTS TO ORIGINAL LOAN AGREEMENT AND PROMISSORY NOTE

**Section 2.01. Amendment of Section 1.01 of the Original Loan Agreement**. Section 1.01 (*Definitions*) of the Original Loan Agreement shall be modified by deleting the following definitions in their entirety and amending and restating each one as follows:

"*Borrower*" means Western State Colorado University Foundation, a Colorado nonprofit corporation, and its successor and assigns.

"*Continuing Covenant Agreement*" means the Continuing Covenant Agreement, dated as of April 1, 2012, as amended by the First Amendment to Continuing Covenant Agreement, dated as of June 1, 2015, each by and between the Borrower and the Bank and relating to the Series 2012 Bonds.

"*Deed of Trust*" means the Deed of Trust, dated April 30, 2012, as amended by the First Amendment to Deed of Trust, dated as of June 19, 2015, each executed by the Borrower to the Public Trustee of Gunnison County, Colorado for the benefit of the Trustee.

"*Promissory Note*" means the promissory note of the Borrower, dated as of even date with reissuance of the Series 2012A Bond, in the form set forth in Section 2.02 of the First Amendment to Loan Agreement, amending Exhibit B of the Original Loan Agreement, and in the principal amount of $5,220,537.53, evidencing the obligation of the Borrower to make Loan Payments.

"*Series 2012A Bond*" means Issuer's Revenue Refunding Bond (Western State Colorado University Foundation Project) Series 2012A (*2015 Reissuance*), deemed reissued under the Indenture in the principal amount of $5,220,537.53.

"*Tax Agreement*" means the Tax Regulatory Agreement, dated as of April 30, 2012, as amended by the First Amendment to Tax Regulatory Agreement, dated as of June 19, 2015, each by and between the Issuer and the Borrower, as further amended or supplemented from time to time.

**Section 2.02. Amendment and Restatement of Exhibit B of the Original Loan Agreement**. Exhibit B (*Form of Promissory Note*) of the Original Loan Agreement shall be amended and restated as follows:

**EXHIBIT B**

**FORM OF PROMISSORY NOTE**

**THIS NOTE HAS NOT BEEN REGISTERED**
**UNDER THE SECURITIES ACT OF 1933, AS AMENDED**

Relating to:

$5,220,537.53
Gunnison County, Colorado
Revenue Refunding Bond
(Western State Colorado University Foundation Project)
Series 2012A (*2015 Reissuance*)

Western State Colorado University Foundation, formerly known as Western State College Foundation a Colorado nonprofit corporation (the "Borrower"), for value received, promises to pay to Wells Fargo Bank, National Association, as trustee (the "Trustee") under the Indenture of Trust hereinafter referred to the principal sum of

FIVE MILLION TWO HUNDRED TWENTY THOUSAND FIVE HUNDRED THIRTY-SEVEN DOLLARS AND FIFFTY-THREE CENTS
($5,220,537.53)

and to pay (a) interest on the unpaid balance of such principal sum from and after the date of this Note at the interest rate or interest rates borne by the Bonds (as hereinafter defined); and (b) interest on overdue principal, and to the extent permitted by law, on overdue interest, at the interest rate provided under the terms of the Bonds.

This Note has been executed and delivered by the Borrower pursuant to a certain Loan Agreement, dated as of April 1, 2012 (the "Original Loan Agreement") and a First Amendment to the Loan Agreement, dated as of June 1, 2015 (the "First Amendment to Loan Agreement" and together with the Original Loan Agreement, the "Loan Agreement"), by and between Gunnison County, Colorado (the "Issuer") and the Borrower. Terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement and the Indenture, as defined below.

Under the Loan Agreement, as amended, the Issuer has loaned to the Borrower the proceeds received from the sale of $5,220,537.53 principal amount of Gunnison County, Colorado Revenue Refunding Bond (Western State Colorado University Foundation Project) Series 2012A (2015 Reissuance), deemed reissued as of June 19, 2015 (the "Series 2012A Bond"), to be applied to assist the Borrower in the refinancing of the Refunded Bonds. The Borrower has agreed to repay such Loan by making Loan Payments at the times and in the amounts set forth in this Note. The Series 2012A Bond has been deemed reissued, concurrently with the execution and delivery of this Note, pursuant to, and are secured by, the Indenture of Trust, dated as of April 1, 2012 (the "Original Indenture") and a First Supplemental Indenture of

Trust, dated as of June 1, 2015 (the "First Supplemental Indenture" and together with the Original Indenture, the "Indenture") each by and between the Issuer and the Trustee, the Deed of Trust, dated April 30, 2012, as amended by the First Amendment to Deed of Trust, dated as of June 19, 2015, from the Borrower to the Public Trustee of Gunnison County, Colorado, for the benefit of the Trustee, the Leasehold Deed of Trust, dated April 30, 2012, as amended by the First Amendment to Leasehold Deed of Trust, dated as of June 19, 2015, from the Borrower to the Public Trustee of Gunnison County, Colorado, for the benefit of the Trustee.

To provide funds to pay the principal, premium, if any and interest on the Series 2012A Bond as and when due, the Borrower hereby agrees to and shall make Loan Payments semiannually each July 15 and January 15, commencing July 15, 2015 (an "Interest Payment Date") the amount equal to interest due on the Bonds on such Interest Payment Dates, and on each date on which principal of the Series 2012A Bond shall be due and payable pursuant to the redemption provisions of the Indenture or upon maturity of the Bonds, an amount equal to such principal due and payable on such date (each such day being a "Loan Payment Date"). In addition, to provide funds to pay the principal, premium, if any and interest payments on the Series 2012A Bond as and when due at any other time, the Borrower hereby agrees to and shall make Loan Payments on any other date on which any principal of, premium, if any and interest payments on the Series 2012A Bond shall be due and payable, whether upon acceleration, call for redemption or otherwise.

If payment or provision for payment in accordance with the Indenture is made in respect of the principal of, premium, if any and interest on the Series 2012A Bond from moneys other than Loan Payments, this Note shall be deemed paid to the extent such payments or provision for payment of principal of, premium, if any and interest on the Series 2012A Bond has been made. Subject to the foregoing, all Loan Payments shall be in the full amount required hereunder.

All Loan Payments shall be payable in lawful money of the United States of America, in immediately available funds, and shall be made to the Trustee at its principal operations center currently located at Wells Fargo Bank, National Association, Denver, Colorado, for the account of the Issuer, deposited in the Bond Fund and used as provided in the Indenture. The Borrower shall make its payments to the Trustee at least five Business Days prior to any Interest Payment Date as set forth in the Loan Agreement.

The obligation of the Borrower to make the payments required hereunder shall be absolute and unconditional and the Borrower shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim which the Borrower may have or assert against the Issuer or the Trustee or any other person.

This Note is subject to optional and mandatory prepayment, in whole or in part, upon the terms and conditions set forth in the Loan Agreement and the Indenture. Any prepayment is also subject to satisfaction of any applicable notice, deposit or other requirements set forth in the Loan Agreement or the Indenture.

Whenever an Event of Default under Section 10.01 of the Loan Agreement shall have occurred, the unpaid principal amount of and any premium and accrued interest on this Note may

be declared or may become due and payable as provided in Section 10.02 of the Loan Agreement; provided that any annulment of a declaration of acceleration with respect to the Series 2012A Bond under the Indenture shall also constitute an annulment of any corresponding declaration with respect to this Note.

The Borrower hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all defenses on the grounds of extension of time of payment for the payment hereof which may be given (other than in writing) by the Trustee.

The Borrower hereby certifies that all conditions, acts and things required to exist, happen and be performed precedent to and in the issuance of this Note, exist, have happened and have been performed, and that the issuance of this Note have been duly authorized by the Borrower.

IN WITNESS WHEREOF, the Borrower has executed this Note as of the date first above written.

WESTERN STATE COLORADO
UNIVERSITY FOUNDATION

By _____
Thomas F. Burggraf, Jr.
Executive Director

## ENDORSEMENT AND ASSIGNMENT

FOR VALUE RECEIVED, the Gunnison County, Colorado (the "Issuer"), hereby endorses and sells, assigns and transfers unto Wells Fargo Bank, National Association, Denver, Colorado, as trustee (the "Trustee') under the Indenture of Trust, dated as of April 1, 2012 and a First Supplemental Indenture of Trust, dated as of June 1, 2015 (together, the "Indenture") each by and between the Trustee and the Issuer, the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints the Trustee to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

IN WITNESS WHEREOF, the undersigned has set his hand as of the 19th day of June, 2015.

[SEAL]

GUNNISON COUNTY, COLORADO

By _____
Chairperson,
Board of County Commissioners

Attest:

By _____
County Clerk and Recorder

**[END OF FORM OF PROMISSORY NOTE]**

## ARTICLE III

## MISCELLANEOUS

**Section 3.01. Incorporation By Reference**. The Issuer and the Borrower agree that the amendments contained in this First Amendment to Loan Agreement shall be incorporated by this reference thereto into the Original Loan Agreement, which Original Loan Agreement as so amended and supplemented shall produce a conformed amended and restated Loan Agreement which shall serve as the sole operative Loan Agreement in connection with the Series 2012A Bonds.

**Section 3.02. Effective Date**. This First Amendment to Loan Agreement shall be effective from and after June 1, 2015.

**Section 3.03. Original Loan Agreement in Full Force and Effect**. All other terms and conditions of the Original Loan Agreement not specifically amended by this First Amendment to Loan Agreement shall remain in full force and effect and are hereby ratified and confirmed by the Holder, Borrower and the Issuer.

**Section 3.04. Counterparts**. This First Amendment to Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 3.05. Agreement To Pay Costs**. The Borrower hereby covenants and agrees to pay, or cause to be paid, upon demand, all costs associated with the preparation, review and delivery of this First Amendment to Loan Agreement, including the fees and expenses of bond counsel, counsel to the Holder and the Issuer.

**Section 3.06. Further Assurances**. The parties hereto hereby agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further acts, instruments, conveyances, transfers and assurances, as any of them reasonably deems necessary or advisable for the implementation, correction, confirmation or perfection of this First Amendment to Loan Agreement and any rights of such party as contemplated hereunder.

**Section 3.07. Applicable Law**. This First Amendment to Loan Agreement shall be governed by and construed in accordance with the laws, excluding the laws relating to the choice of law, of the State of Colorado.

[Signatures on the following page]

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this First Amendment to Loan Agreement to be executed in their respective corporate names and their attested by their duly authorized officer and the Issuer has caused its corporate seal to be affixed hereto, all as of the date first above written.

[SEAL]

GUNNISON COUNTY, COLORADO

By _____
Chairperson,
Board of County Commissioners

Attest:

By _____
County Clerk and Recorder

WESTERN STATE COLORADO
UNIVERSITY FOUNDATION

By _____
Thomas F. Burggraf
Executive Director

## ACKNOWLEDGEMENT AND CONSENT

Wells Fargo Bank, National Association, as Purchaser and Holder of 100% of the Series 2012A Bond, hereby acknowledges, consents and agrees to the execution and delivery of this First Amendment to Loan Agreement.

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Purchaser and Holder

By _____
Name _____
Title _____