

**FINANCIAL GUARANTEE**

Financial Guarantee No. \_\_\_\_\_ Date: [ \_\_\_\_\_ ],

**ISSUER:** **Momentum Financial Group LLC**

**TYPE:** **Series [15/39/63]**

**FACE VALUE:**  
**(guarantee limit)**

**ANNUAL FEE:** **[3.00%/2.50%/2.00%]**

**MATURITY DATE:**

**RECIPIENT:** **ABC COMPANY**

**RECIPIENT EIN:**

**RECIPIENT'S  
ADDRESS:**

**BENEFICIARY:**

**BENEFICIARY  
ADDRESS:**

**TO BENEFICIARY:**

We hereby establish this Financial Guarantee Instrument No. XXXXXXXXX ("**Instrument**" or "**FG**") as a credit enhancement instrument ("**CEI**"), at the request of our client, ABC COMPANY LLC. (the "**FG Recipient**"), for your benefit pursuant to that certain Loan Agreement dated [as of the date hereof] by and between Beneficiary and FG Recipient (the "**Loan Agreement**"), relating to a promissory note made by FG Recipient in accordance with the Loan Agreement (the "**Note**"). This Instrument shall be for an amount up to but not exceeding the aggregate sum of exactly ONE MILLION and 00/100 U.S. Dollars (USD \$1,000,000.00), ("**Face Value**").

We hereby irrevocably authorize you to draw on us, in an amount not to exceed the Face Value of this Instrument as set forth above and in accordance with the terms and conditions as hereinafter set forth, in a single drawing between the 15<sup>th</sup> day prior to the Maturity Date of this Instrument as set forth above and the Banking Day prior to the Maturity Date of this Instrument (the "**FG Call Period**") by delivery to us of your duly completed payment demand certificate during the FG Call Period signed by you in substantially the form of Annex A attached hereto (your "**Payment Demand Certificate**"). For purposes of this Instrument, a "**Banking Day**" shall mean a day on which banks in

Atlanta, Georgia or New York, New York are not required or permitted by applicable law, regulation or executive order to be closed for business.

## CREDIT ENHANCEMENT INSTRUMENT GUARANTY TERMS AND CONDITIONS

1. **Instrument Guaranty.** For valuable consideration, MOMENTUM FINANCIAL GROUP, LLC, a Georgia limited liability company (“**Instrument Guarantor**”), guarantees payment to Beneficiary named above on the face of this Instrument, its successors and assigns, of all amounts owed to Beneficiary by the FG Recipient under the Loan Agreement and the Note (said loan amounts that become owing under the Loan Agreement and the Note are hereinafter referred to as the “**Obligations**”). The Loan Agreement and the Note (along with the other documents as required by Beneficiary under the Loan Agreement) shall also be referred to herein collectively as the “**Loan Documents**.” The obligations of Instrument Guarantor hereunder shall not be subject to any counterclaim, setoff, withholding, or deduction unless required by applicable law.
2. **Limited Guaranty and Collateralization.**
  - (a) The liability of Instrument Guarantor as to the Obligations hereunder shall be limited to the Face Value of the Instrument issued to FG Recipient for the benefit of Beneficiary. Instrument Guarantor shall only be required to fulfill its obligations hereunder if the Obligations are not paid in full by the 15<sup>th</sup> day prior to the Maturity Date of the Instrument. Beneficiary shall be required to demand payment of any unpaid Obligations on or following the 15<sup>th</sup> day prior to the Maturity Date of the Instrument and prior to the Maturity Date of the Instrument.
  - (b) Instrument Guarantor has collateralized its obligations hereunder with assigned assets equal in value to the Face Value of the Instrument (the “Trust Assets”), which amount is held in a trust account by a trustee financial institution for the sole benefit of Instrument Guarantor to satisfy obligations of FG Recipient that arise in connection with a default in the full payment of the Obligations by the 15<sup>th</sup> day prior to the Maturity Date of the Instrument.
  - (c) The Trust Assets are reserved exclusively for the benefit of Beneficiary on behalf of the FG Recipient during the term hereof until terminated as set forth in Section 5 hereof. Proof of funds has been provided to Beneficiary to confirm the ability of the Instrument Guarantor to satisfy any amounts that become due and payable pursuant to the terms of this Instrument.
3. **Guaranty Absolute.** Instrument Guarantor agrees that its obligations under this Instrument are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor. In furtherance of the foregoing and without limiting the generality thereof, Instrument Guarantor agrees as follows:
  - (a) The liability of Instrument Guarantor under this Instrument is a continuing guaranty of payment and not of collectability, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Loan Documents or the pursuit by Beneficiary of any remedies which it now has or may hereafter have under the Loan Documents;
  - (b) Beneficiary may enforce this Instrument upon the occurrence of a default by FG Recipient under the Loan Documents during the FG Call Period in accordance with

the terms hereof notwithstanding the existence of a dispute between Beneficiary and FG Recipient with respect to the existence of the default;

- (c) The obligations of Instrument Guarantor under this Instrument are independent of the obligations of FG Recipient under the Loan Documents and a separate action or actions may be brought and prosecuted against Instrument Guarantor whether or not any action is brought against FG Recipient or any other guarantors and whether or not FG Recipient is joined in any such action or actions;
- (d) Beneficiary may, at its election, foreclose on any security held by Beneficiary, whether or not the means of foreclosure are commercially reasonable, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Instrument Guarantor under this Instrument, except to the extent the amount(s) owed to Beneficiary by FG Recipient have been paid; and
- (e) Instrument Guarantor shall continue to be liable under this Instrument and the provisions hereof shall remain in full force and effect notwithstanding:
  - (i) Any modification, amendment, supplement, extension, agreement or stipulation between FG Recipient and Beneficiary or their respective successors and assigns, with respect to the Loan Documents or the obligations encompassed thereby;
  - (ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Loan Documents;
  - (ii) Any release of FG Recipient or any other guarantor from any liability with respect to the Obligations or any portion thereof;
  - (iv) Any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;
  - (v) Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment shall not be deemed to release Instrument Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit;
  - (vi) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Instrument;
  - (vii) Beneficiary's exercise of any other rights available to it under the Loan Documents;
  - (viii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the FG Recipient and to any corresponding restructuring of the Obligations;

- (ix) Any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;
- (x) Any defenses, setoffs or counterclaims that FG Recipient may allege or assert against Beneficiary with respect to the Obligations; and
- (xi) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Instrument Guarantor as an obligor with respect to the Obligations.

4. **Presentation.** Payment under this Instrument is available to Beneficiary upon presentment of the Payment Demand Certificate in full compliance with the terms and conditions of this Instrument. Each such Payment Demand Certificate shall be presented at the Instrument Guarantor's mailing address set forth herein which must be received within the FG Call Period in order for it to be honored by Instrument Guarantor. Upon receipt of the Payment Demand Certificate during the FG Call Period in accordance with the terms hereof, Instrument Guarantor shall pay the demand guarantee amount up to the Face Value of this Instrument by the fifth (5<sup>th</sup>) Banking Day following receipt of the Payment Demand Certificate. All payments made by Instrument Guarantor under this Instrument will be made in immediately available funds in accordance with the Payment Demand Certificate.

5. **Termination.** The demand guaranty obligations hereunder term are continuous until the earlier of (i) the date that all Obligations are paid in full by FG Recipient on or before the maturity date of the Note; or (ii) the Maturity Date of the Instrument, at which time its face value (and thus the guaranty limit) shall become \$0.00.

6. **Bankruptcy; Post-Petition Interest.** So long as any Obligations remain outstanding, Instrument Guarantor shall not, without the prior written consent of Beneficiary, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against FG Recipient. The obligations of Instrument Guarantor hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the FG Recipient or by any defense which FG Recipient may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. Any interest on any portion of the Obligations which accrues after the commencement of any such proceeding (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Obligations if said proceedings had not been commenced) shall be included in the Obligations. Instrument Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Beneficiary, or allow the claim of Beneficiary in respect of, any such interest accruing after the date on which such proceeding is commenced.

7. **Subrogation.** Instrument Guarantor shall be subrogated to all rights of Beneficiary against FG Recipient with respect to any amounts paid by Instrument Guarantor hereunder, provided that Instrument Guarantor postpones all subrogation rights until all Obligations have been irrevocably paid in full to Beneficiary. If any amount shall be paid to Instrument Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder shall not have been indefeasibly paid in full, Instrument Guarantor shall hold such amount in trust for the benefit of Beneficiary and shall promptly pay such amount to Beneficiary.

8. **Subordination.** After payment of the Annual Fee to Instrument Guarantor and other consideration due Instrument Guarantor pursuant to FG Recipient's purchase of the Instrument, any indebtedness of FG Recipient now or hereafter held by Instrument Guarantor is hereby subordinated in right of payment to the Obligations. Instrument Guarantor shall make no claim for such indebtedness until all Obligations of FG Recipient have been fully discharged. Instrument Guarantor shall not assign all or any part of such indebtedness unless Beneficiary is given prior notice and such assignment is expressly made subject to the terms hereof.

9. **Waivers of Instrument Guarantor.** Instrument Guarantor hereby waives: (a) the benefit of all principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof (and agrees that Instrument Guarantor's obligations shall not be affected by any circumstances, whether or not referred to in this Instrument, which might otherwise constitute a legal or equitable discharge of a surety or a guarantor); (b) the benefits of any right of discharge under any and all statutes or other laws relating to guarantors or sureties and any other rights of sureties and guarantors; (c) diligence in collecting any of the Obligations, presentment, demand for payment, protest and all notices with respect to the Loan Documents which may be required by statute, rule of law or otherwise to preserve Beneficiary's rights against Instrument Guarantor hereunder; (d) any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (e) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the FG Recipient, including, without limitation, any defense based on or arising out of the lack of validity or enforceability of the Obligations or by reason of the cessation of liability of the FG Recipient under the Loan Documents for any reason but full performance or payment; (f) filing of claims with a court in the event of the insolvency or bankruptcy of the FG Recipient; and (g) all rights to require Beneficiary to: (1) proceed against or exhaust any collateral held by Beneficiary to secure the repayment of the Obligations; (2) proceed against or pursue any remedy it may now or hereafter have against FG Recipient or any guarantor, or, if FG Recipient or any guarantor is a partnership, any general partner of FG Recipient or general partner of any guarantor; or (3) demand or require collateral security from FG Recipient, any other guarantor or any other Person as provided by applicable law or otherwise. Instrument Guarantor assumes all responsibility for keeping itself informed of FG Recipient's financial condition and all other factors affecting the risks and liability assumed by Instrument Guarantor hereunder, and Beneficiary shall have no duty to advise Instrument Guarantor of information known to it regarding such risks except as expressly required by any of the Loan Documents.

10. **No Waiver of Rights by Beneficiary.** No right or power of Beneficiary hereunder shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.

11. **Assignment, Successors and Assigns.** This Instrument shall be binding upon Instrument Guarantor, its successors and permitted assigns, and shall inure to the benefit of, and be enforceable by, Beneficiary, its successors, assigns and creditors until the Maturity Date of the Instrument. Beneficiary shall have the right to assign this Instrument, in whole but not in part, to any nationally recognized financial institution that is the holder and beneficial owner of the Note. Any transfer request must be effected by presenting to Instrument Guarantor the certificate substantially in the form of **Annex C** attached hereto, together with the original of this Instrument. Transfers to

designated Foreign Nationals and/or specially designated nationals contrary to the U.S. Treasury Department or Foreign Assets Control Regulations are not permitted. The Instrument Guarantor shall have no right to assign its obligations hereunder without the prior written consent of Beneficiary.

12. **Representations of Instrument Guarantor.** Instrument Guarantor hereby represents and warrants that: (a) it is a limited liability company formed in the State of Georgia, is in good standing and has full power and authority to execute, deliver and perform the guaranty obligations herein; (b) it has taken all necessary actions to execute, deliver and perform this Instrument; (c) this Instrument constitutes the legal, valid and binding obligation of Instrument Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws effecting creditors' rights generally and to general equitable principles; (d) execution, delivery and performance by Instrument Guarantor of this Instrument does not conflict with, violate or create a default under any agreement or instruments to which it is a party or to which any of its assets are subject or any applicable law, rule, regulation, order or judgment of any governmental authority; and (e) all consents, approvals and authorizations of governmental authorities required in connection with Instrument Guarantor's execution, delivery and performance of this Instrument have been duly and validly obtained and remain in full force and effect.

13. **Governing Law.** This Instrument is made under and shall be governed in all respects by the laws of the State of Georgia, without regard to conflict of law principles. If any provision of this Instrument is held invalid under the laws of Georgia, this Instrument shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.

14. **Construction.** All parties to this Instrument are represented by legal counsel. The terms and the language used in this Instrument shall be deemed to be the terms and language chosen by the parties hereto to express their mutual intent. This Instrument shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Instrument. No rule of strict construction will be applied against any party.

15. **Severability.** If any provision in or obligation under this Instrument 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.

16. **Third Party Rights.** This Instrument shall not be construed to create any rights in any parties other than Instrument Guarantor, FG Recipient and Beneficiary and their respective successors and assigns in accordance with the terms hereof.

17. **Notices.** Any demand, request, notice, instruction, consent, waiver and other communications required or permitted pursuant to the provisions of this Instrument must be in writing and will be deemed to have been properly given (a) when delivered by hand; (b) three (3) days after sent by certified mail, return receipt requested; or (d) one (1) day after deposit with a nationally recognized overnight delivery service, in each case to the appropriate addresses set forth below:

## Beneficiary:

ABC COMPANY LLC  
Address:  
Telephone:  
Fax:  
Email:

## Instrument Guarantor:

MOMENTUM FINANCIAL GROUP LLC  
500 Australian Avenue  
Suite 600  
West Palm Beach, FL 33401  
Email: [info@momentumfinancialgroup.com](mailto:info@momentumfinancialgroup.com)

## with a copy to:

The Coleman Law Firm, LLC  
Attn: Bernard H. Coleman, Esq.  
3350 Riverwood Parkway SE  
Suite 1900  
Atlanta, Georgia 30339  
Fax: 404-419-6571  
Email: [bcoleman@tclfir.com](mailto:bcoleman@tclfir.com)

Such notice shall be effective upon confirmation of the actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

18. Time is of the Essence. Instrument Guarantor agrees that, with respect to each and every obligation and covenant contained herein, time is of the essence.

19. Final Agreement. Instrument Guarantor acknowledges receipt of a copy of each of the Loan Documents. THIS INSTRUMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. Neither this Instrument nor any of its provisions may be waived, modified, amended, discharged or terminated except by an agreement in writing signed by the party against which the enforcement of the waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in that agreement.

20. WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF INSTRUMENT GUARANTOR AND BENEFICIARY (A) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR ANY LOAN DOCUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS INSTRUMENT GUARANTOR AND BENEFICIARY THAT IS TRIABLE OF

RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY INSTRUMENT GUARANTOR AND BENEFICIARY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

[Signatures appears on following page]



IN WITNESS WHEREOF, Instrument Guarantor has executed this Instrument as of this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

MOMENTUM FINANCIAL GROUP, LLC

By: \_\_\_\_\_  
AUTHORIZED SIGNATURE

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Annex A**

**PAYMENT DEMAND CERTIFICATE**

To: Momentum Financial Group, LLC  
500 Australian Ave  
Suite 600  
West Palm Beach, FL 33401

Re: Instrument No.:

The undersigned, a duly authorized officer of the undersigned Beneficiary, hereby certifies to MOMENTUM FINANCIAL GROUP, LLC (the “Instrument Issuer”), with reference to the Instrument No.: XXXXXXXX (the “Instrument”), issued by Instrument Issuer in favor of Beneficiary, as follows:

- (1) As the Obligations (as defined in the Instrument) to Beneficiary have not been satisfied in full by the FG Recipient by the maturity date of the Note, Beneficiary is making a demand guarantee call under the Instrument in the amount of \$[equal to the unpaid amount of under the Note].
- (2) The amount of this payment demand does not exceed the Face Value of the Instrument.
- (3) This payment demand is being made upon the Instrument Issuer during the FG Call Period as defined in the Instrument.
- (4) Instrument Issuer will make the payment to Beneficiary via wire transfer in accordance with the following wire instructions:

The terms used herein which are not specifically defined herein are defined in the Instrument.

IN WITNESS WHEREOF, Beneficiary has executed and delivered this Payment Demand Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_.

as Beneficiary

By: \_\_\_\_\_

**Annex C**

**CERTIFICATE FOR TRANSFER**

To: Momentum Financial Group, LLC  
500 Australian Avenue  
Suite 800  
West Palm Beach, FL 33401

Re: Instrument No.:

The undersigned, a duly authorized officer of the undersigned Beneficiary, hereby certifies to MOMENTUM FINANCIAL GROUP, LLC (the “Instrument Issuer”), with reference to the Instrument No.: XXXXXXXX (the “Instrument”), issued by Instrument Issuer in favor of Beneficiary, as follows:

For value received, Beneficiary hereby irrevocably transfers to:

\_\_\_\_\_  
(Name of Transferee)

\_\_\_\_\_  
(Address)

all rights of Beneficiary to demand payment under the Instrument in its entirety. Beneficiary hereby notifies the Instrument Issuer that the transferee is a nationally recognized financial institution that is also the holder and beneficial owner of the Note.

By this transfer, all rights of Beneficiary in the Instrument are transferred to the transferee and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments, and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to Beneficiary.

The original of the Instrument is returned herewith, and Beneficiary asks the Instrument Issuer to endorse the transfer on the reverse thereof, and forward it directly to the transferee with the Instrument Issuer’s customary notice of transfer.

Beneficiary agrees to pay to the Instrument Issuer on demand any expenses which may be incurred by the Instrument Issuer in connection with this transfer.

The terms used herein which are not specifically defined herein are defined in the Instrument.

IN WITNESS WHEREOF, Beneficiary has executed and delivered this Certificate this \_\_\_\_\_ day of \_\_\_\_\_.  
Instrument Issuer:

MOMENTUM FINANCIAL GROUP, LLC

By: \_\_\_\_\_  
AUTHORIZED SIGNATURE

Beneficiary: