

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:
Tempest Group, LLC,

Debtor.

**Case No. 16-24204 CMB
Chapter 11
Document No.**

**DISCLOSURE STATEMENT
TO ACCOMPANY PLAN DATED MARCH 19, 2018**

 Chapter 11 Small Business (Check box only if debtor has elected to be considered a small business under 11 U.S.C. §1121(e))

Debtor furnishes this disclosure statement to creditors in the above-captioned matter pursuant to Bankruptcy Code §1125 to assist them in evaluating Debtor's proposed Chapter 11 plan, a copy of which is attached hereto. Creditors may vote for or against the plan of reorganization. Creditors who wish to vote must complete their ballots and return them to the following address before the deadline noted in the order approving the disclosure statement and fixing time. The Court will schedule a hearing on the plan pursuant to 11 U.S.C. §1129.)

Address for return of ballots:

**Donald R. Calaiaro, Esquire
Calaiaro Valencik
428 Forbes Avenue, Suite 900
Pittsburgh, PA 15219**

I. Background

- 1. Name of Debtor**
Tempest Group, LLC
- 2. Type of Debtor (individual, partnership, corporation)**
Corporation owned by Fenix Capital LLC¹
- 3. Debtor's Business or Employment**
The Debtor operates residential real estate units in its business. The Debtor owns 5 properties; 2 multi-unit buildings; 2 duplexes and a single-family dwelling.
- 4. Date of Chapter 11 Petition**
November 10, 2016
- 5. Events that Caused the Filing:**

¹ Fenix Capital is an LLC whose sole member is Joann Jenkins.

The Debtor employed a manager who did not operate the business prudently. It is suspected that he diverted money and intentionally failed to make payments. The debtor believes this was part of plan to divert money to that Manager. The Debtor fell behind on payments to secured creditors. The secured creditors filed complaints in foreclosure. The Debtor filed for bankruptcy to stop the foreclosures and attempt to reorganize.

6. Anticipated Future of the Company & Source of this Information and Opinion

Prior to the Bankruptcy, Joann Jenkins terminated the manager. At that point, the occupancy was appx. 50 % and the units had suffered a lot of damages because of neglect. The properties are currently in good repair and 100% occupied The Debtor intends to retain its property and continue the operation of the real estate rental business. The modification of secured claims will create a positive cash flow and provide an increase in cash flow into the business. This increased cash flow will make the Plan feasible and ensure the viability of the Plan of Reorganization. The Debtor has made adequate protection payments during the administration of the case.

7. Summarize all Significant Features of the Plan Including When and How Each Class of Creditor Will Be Paid and What, if Any, Liens Will Be Retained by Secured Creditors or Granted to Any Creditor under the Plan.

(A) Class 1, Administrative Claims, will be paid in full on the plan effective date.

(B) Class 2, Select Portfolio Servicing, Inc., formerly Bank of America, the holder of a first mortgage, recorded in 2004, on rental property located at 1328 Virginia Ave., Monaca, PA 15061, will be modified by this plan. The secured claim, as determined by an adversary action and their Modified secured claim will be reduced to the value of the collateral. The Debtor will restructure the modified secured claim and the mortgage to a new 30-year fixed rate mortgage at 3% payable over 30 years. The Debtor projects that Select Portfolio Servicing, Inc. will be secured to the extent of \$82,800.00.

(C) Class 3, FB Acquisitions Property XVII LLC. Formerly Navy Portfolio, LLC, formerly Home Savings and Loan Company, the holder of a first mortgage on rental property located at 414, 416-418 New York Avenue, Rochester, PA 15074 and 415-417 New York Avenue, Rochester, PA 15074, will be modified by this plan. The secured claim, as determined by an adversary action and their Modified secured claim will be reduced to the value of the collateral. The

Debtor will restructure the modified secured claim and the mortgage to a new 30-year fixed rate mortgage at 4.5% payable over 30 years. The Debtor projects that the secured claim. The Debtor projects that FB Acquisitions will be secured to the extent of \$135,000.00. This property is subject to a real estate tax lien of \$ 5,561.68 which has priority over the 1st mortgage.

- (D) Class 4, Bayview Loan Servicing, the holder of a first mortgage on rental property located at 131 Court Street, Carnegie, PA 15106 will be modified by this plan. The mortgage will be reduced to the actual value of the collateral. Pursuant to an Order of Court, the Debtor commenced adequate protection payments of \$1,294.58 on April 19, 2017) and on the 10th of each month thereafter based on the projected value of 266,545.00. If the payoff balance is less than 266,545.00, than that amount will be used as the modified claim The Debtor will again restructure the remaining balance due, after credit for adequate protection payments made as of the date of confirmation, to a new 30-year fixed rate mortgage at 4.25%.
- (E) Class 5, First National Bank of PA, the holder of a first mortgage on rental property located at 282 Jackson Street, Rochester PA 15074 will be modified by this plan. The Debtor commenced adequate protection payments on June 13, 2017. The secured claim, as determined by an adversary action and their Modified secured claim will be reduced to the value of the collateral. The Debtor will restructure the secured claim and the mortgage to a new 30-year fixed rate mortgage at 4.25% payable over 30 years. The Debtor projects that the secured claim is \$ 38,500.00.
- (F) Class 6. Chicago Title Insurance Company assignee of Sewickley Savings Bank of PA was the holder of an unsecured claim in the amount of 1,013,749.55. They were to be paid 10% in the prior bankruptcy and a stipulation which determined that they held an unsecured claim. The \$ 101,400.00 will be paid over ten years in accordance with the consent order entered into in the prior bankruptcy case.
- (G) Class 7, Executory Contracts, the executory contracts with the tenants of the rental properties will be assumed.
- (H) Class 8, Secured & Priority Tax Claims, will be paid in full over 5 years with post confirmation interest as allowed by law.

The Debtor will also file avoidance actions and all net proceeds of that action will be paid to class 8. This is a guaranteed payment under the Plan. The Debtor may also initiate actions against

Neil Metzger and anyone else involved in the Diversion of funds and Wells Fargo Bank for allowing employees to open up accounts in the name of the Debtor; such accounts were used to divert funds. The Debtor will pay the costs of these actions and dedicate 40% of any net recovery to class 8 to pay these claims off sooner than five years.

(I) Class 9, General Unsecured Creditors, the class 9 allowed claims will be paid a dividend of \$10,000.00 over 5 years without interest.

(J)

(K) Class 10, Equity Shareholders, Equity interests in the Debtor will be retained with modifications upon the shareholders and reduced salaries to assist in feasibility of the Plan.

8. Are All Monthly Operating Statements Current and on File with the Clerk of Court? Yes X No _____ if Not, Explain:

9. Does the plan provide for releases of nondebtor parties? Specify which parties and terms of release. NO

10. Identify all executory contracts that are to be assumed or assumed and assigned. Yes, the leases to the residential tenants will be assumed.

11. Has a bar date been set? Yes X no
(If not, a motion to set the bar date has been filed simultaneously with the filing of this disclosure statement.)

12. Has an election under 11 U.S.C. §1121(e) has been filed with the Court to be treated as a small business? Yes ___ No X

13. Specify property that will be transferred subject to 11 U.S.C. §1146(c). NONE

II. Creditors

A. Secured Claims

SECURED CLAIMS

Creditor	Total Amount Owed	Arrearages	Type of Collateral Priority of Lien (1, 2, 3)	Disputed (D) Liquidated (L) Unliquidated (U)	Will Liens be Retained Under the Plan (Y) or (N)
Bank of America- transferred to Select Portfolio Servicing, Inc. at docket #250 (POC#14)	\$95,000.00	N/A; the mtg. is being modified; it is not being cured	1 st mtg. 1328 Virginia Ave., Monaca Pa 15061	Disputed as to the extent it is secured	Yes, as modified; but only to the extent it is secured.

FB Acquisitions Home Savings and Loan Co.- transferred from Navy Portfolio, LLC at docket #261 (POC#6) Blanket Mortgage	\$166,177.64	N/A; the mortgage is being modified; it is not being cured.	1st mtg. 414,416 & 418 New York Ave., Rochester, PA 15074 & 1 st mtg. 415,417 New York Ave., Rochester, PA 15074	Disputed as to the extent it is secured	Yes, as modified; but only to the extent it is secured.
Bayview Loan Servicing, LLC (POC#2)	\$255,000.00	N/A; the mtg. is being modified; it is not being cured.	131 Court St., Carnegie, PA 15106	Disputed as to the extent it is secured	Yes, as modified; but only to the extent it is secured.
First National Bank of PA	\$38,574.56	N/A; the mtg. is being modified; it is not being cured.	282 Jackson Street, Rochester PA 15074	Disputed as to the extent it is secured	Yes, as modified; but only to the extent it is secured.
TOTAL	\$1,638,047.58				

B. Priority Claims

PRIORITY CLAIMS

Creditor	Total Amount Owed	Type of Collateral	(D)(L)(U) *
NONE			

* Disputed (D), Liquidated (L), or Unliquidated (U)

C. Unsecured Claims- *Non Insider Claims*

1.	Amount Debtor Scheduled (Disputed and Undisputed)	\$1,052,388.33
2.	Amount of Unscheduled Unsecured Claims²	\$ N/A
3.	Total Claims Scheduled or Filed	\$1,052,388.33
4.	Amount Debtor Disputes	\$ N/A
5.	Estimated Allowable Unsecured Claims	\$1,052,388.33

D. Other Classes of Creditors-*Insider Claims*

1.	Amount Debtor Scheduled (Disputed and Undisputed)	\$0
2.	Amount of Unscheduled Claims¹	\$N/A
3.	Total Claims Scheduled or Filed	\$0
4.	Amount Debtor Disputes	\$0
5.	Estimated Allowable Claims	\$0

E. Other Classes of Interest Holders

1.	Amount Debtor Scheduled (Disputed and Undisputed)	\$
2.	Amount of Unscheduled Claims¹	\$

²Includes a.) Unsecured claims filed by unscheduled creditors; b.) That portion of any unsecured claim filed by a scheduled creditor that exceeds the amount debtor scheduled; and c.) Any unsecured portion of any secured debt not previously scheduled.

- 3. Total Claims Scheduled or Filed \$
- 4. Amount Debtor Disputes \$
- 5. Estimated Allowable Claims \$

III. Assets

ASSETS

Assets	Value	Basis for Value Priority of Lien	Name of Lien Holder (if any) (Fair Market Value/Book Value)	Amount of Debtor's Equity (Value Minus Liens)
Rental property located at 1328 Virginia Ave., Monaca, PA 15061 (single family) Class 2	\$82,000.00	Debtor's opinion	Select Portfolio, Sewickley Savings Bank	0.00
Rental property located at 414,416,418 New York Ave., Rochester, PA 15074 (3 unit) Class 3	\$55,000.00	Appraisal	(1 st mortgage)/ Home Savings and Loan Co., now Navy Portfolio(Sewickley Savings Bank (2 nd mortgage)	0.00
Rental property located at 415,417 New York Ave., Rochester, PA 15074 (duplex) Class 4	\$66,000.00	Appraisal	1 st mortgage)/ Home Savings and Loan Co., now Navy Portfolio, Sewickley Savings Bank (2 nd mortgage)	0.00
Rental property located at 131 Court St., Carnegie, PA 15106 (6 unit) Class 5	\$300,000.00		Bayview Loan Servicing LLC, 1 st mortgage	0.00
Rental property located at 282 Jackson St., Rochester, PA 15074 (duplex) Class 7	\$102,000.00	Debtor's opinion	First National Bank	0.00
	\$605,000.00			\$0.00

1. Are any assets which appear on Schedule A or B of the bankruptcy petition not listed above? None
If so, identify asset and explain why asset is not in estate:

2. Are any assets listed above claimed as exempt? If so attach a copy of Schedule C and any amendments.

3.

IV. SUMMARY OF PLAN

1. Effective Date of Plan: May 21, 2018

2. Will cramdown be sought? X Yes No
If Yes, state bar date: The hearing on the Confirmation of this Plan

4. Treatment of Secured Non-Tax Claims

SECURED NON-TAX CLAIMS

Name of Creditor	Class	Amount Owed	Summary of Proposed Treatment
Select Portfolio Servicing Inc.	2	\$102,355.74	Class 2, <u>Select Portfolio Servicing, Inc.</u> , formerly Bank of America, the holder of a first mortgage, recorded in 2004, on rental property located at 1328 Virginia Ave., Monaca, PA 15061, will be modified by this plan. The secured claim, as determined by an adversary action and their Modified secured claim will be reduced to the value of the collateral. The Debtor will restructure the modified secured claim and the mortgage to a new 30-year fixed rate mortgage at 3% payable over 30 years. The Debtor projects that Select Portfolio Servicing, Inc. will be secured to the extent of \$82,800.00.
FB Acquisitions Property XVII	3	\$222,235.00	Class 3, <u>FB Acquisitions Property XVII LLC. Formerly Navy Portfolio, LLC, formerly Home Savings and Loan Company</u> , the holder of a first mortgage on rental property located at 414, 416-418 New York Avenue, Rochester, PA 15074 and 415-417 New York Avenue, Rochester, PA 15074, will be modified by this plan. The secured claim, as determined by an adversary action and their Modified secured claim will be reduced to the value of the collateral. The Debtor will restructure the modified secured claim and the mortgage to a new 30-year fixed rate mortgage at 4.5% payable over 30 years. The Debtor projects that the secured claim. The Debtor projects that Navy Portfolio, LLC will be secured to the extent of \$135,000.00. (This property is subject to a real estate tax lien of \$ 5,561,68
Bayview Loan Servicing, LLC	4	\$266,545.00	Class 4, <u>Bayview Loan Servicing</u> , the holder of a first mortgage on rental property located at 131 Court Street, Carnegie, PA 15205 will be modified by this plan. The secured claim, as determined by an adversary action and their Modified secured claim will be reduced to the value of the collateral. The Debtor will restructure the modified secured claim and the mortgage to a new 30 year fixed rate mortgage at 4.25% payable over 30 years. The Debtor projects that the secured claim The Debtor projects that Bayview will be secured to the extent of \$266,545.00 because of the stipulation of the Parties. (This property is subject to a real estate tax lien of \$ \$11,402.60)
First National Bank of PA	5	\$38,754.56	Class 5, First National Bank of PA, the holder of a first mortgage on rental property located at 282 Jackson Street, Rochester PA 15074 will be modified by this plan. The secured claim, as determined by an adversary action and their Modified secured claim will be reduced to the value of the collateral. The Debtor will restructure the modified secured claim and the mortgage to a new 30 year

			fixed rate mortgage at 4.25% payable over 30 years. The Debtor projects that the secured claim The Debtor projects that First National Bank will be secured to the extent of \$38,500.00.
TOTAL		\$618,345.30	

4. Treatment of Secured Tax Claims

SECURED TAX CLAIMS

Name of Creditor	Class	Amount Owed	Summary of Proposed Treatment
Rochester Area SD POC # 4	8	\$5,178.31	Creditor will be paid in full over 5 yrs at statutory interest
Rochester Area SD # 5	8	\$3,759.27	Creditor will be paid in full over 5 yrs at statutory interest
Rochester Area SDPOC # 6	8	\$4,327.17	Creditor will be paid in full over 5 yrs at statutory interest
Rochester Area SDPOC #8	8	\$2,120.85	Creditor will be paid in full over 5 yrs at statutory interest
Rochester Area SD POC #9	8	\$1,212.85	Creditor will be paid in full over 5 yrs at statutory interest
Beaver County TCB POC #7-1	8	\$11,502.15	Creditor will be paid in full over 5 yrs at statutory interest
Boro of Carnegie POC # 13-1	8	\$1,491.89	Creditor will be paid in full over 5 yrs at statutory interest
PA Dept. of Rev. POC # 2-1	8	\$3,912.48	Creditor will be paid in full over 5 yrs at statutory interest
TOTAL		\$33,504.97	

5. Treatment of Administrative Non-Tax Claims²

ADMINISTRATIVE NON-TAX CLAIMS

Name of Creditor *	Amount Owed	Type of Debt **	Summary of Proposed Treatment and Date of First Payment
Calaiaro Valencik	\$30,000.00	Attorney for Debtor Fees	To be paid in full on the Plan Effective Date or as parties agree.
United States Trustee	650.00	Court Costs	To be paid in full on the Plan Effective Date.
TOTAL	\$30,650.00		

* Identify and Use Separate Line for Each Professional and Estimated Amount of Payment

** Type of Debt (P=Professional, TD=Trade, TX=Tax)

6. Treatment of Administrative Tax Claims

ADMINISTRATIVE TAX CLAIMS

Name of Creditor *	Amount Owed	Type of Debt **	Summary of Proposed Treatment and Date of First Payment
NONE			

7. Treatment of Priority Non-Tax:

²Include all §503(b) administrative claims.

PRIORITY NON-TAX CLAIMS

Name of Creditor	Class	Amount Owed	Summary of Proposed Treatment
NONE			

8. Treatment of Priority Tax Claims³:

PRIORITY TAX CLAIMS

Name of Creditor	Class	Amount Owed	Date of Assessment	Summary of Proposed Treatment
PA DOR POC # 2-1	8	\$1,224.28		Creditor will be paid in full over 5 years at statutory interest

9. Treatment of General Unsecured Class 9, Non-Tax Claims:

GENERAL UNSECURED NON-TAX CLAIMS

Creditor	Class	Total Amount Owed	Percent of Dividend
Duquesne Light Co	9	\$1,415.23	25%
Bayview- disputed – in in rem claim only and not entitled to an unsecured claim	9	\$32,723.55	25%
TOTAL		\$34,138.78	\$ 10,000.00

10. Treatment of General Unsecured Tax Claims:

GENERAL UNSECURED TAX CLAIMS

Creditor	Class	Total Amount Owed	Percent of Dividend
IRS POC # 3-1- disputed	9	\$4,500.00	25%
TOTAL		\$4,500.00	

11. Will periodic payments be made to unsecured creditors?
 Yes x No _____ First payment to begin August 2013

If so:

Amount of each payment (aggregate to all unsecured claimants) \$1,000.00

Estimated date of first payment: August 2018

Time period between payments: Monthly

Estimated date of last payment: July 2028

Contingencies, if any:

State source of funds for planned payments, including funds necessary for capital replacement, repairs, or improvements: The debtor has set aside funds for future repairs and capital improvements.

³Include dates when any §507(a) (7) taxes were assessed.

Other significant features of the plan:

Include any other information necessary to explain this plan:

V. Comparison of Plan with Chapter 7 Liquidation

If debtor's proposed plan is not confirmed, the potential alternatives would include proposal of a different plan, dismissal of the case or conversion of the case to Chapter 7. If this case is converted to Chapter 7, a trustee will be appointed to liquidate the debtor's non-exempt assets. In this event, all secured claims and priority claims, including all expenses of administration, must be paid in full before any distribution is made to unsecured claimants.

Total value of Chapter 7 estate	\$920,000.00
(See Section III)	
1. Less secured claims (See IV-2)	\$1,638,047.58
2. Less administrative expenses (See IV-3 and include approximate Chapter 7 expenses)	\$30,650.00
3. Less other priority claims (See IV-4)	\$33,504.97
Total Amount Available for Distribution to Unsecured Creditors	\$0.00
Divided by total allowable unsecured claims of (See Section II C)	\$1,088,352.38
Percentage of Dividend to Unsecured Creditors:	0%

Will the creditors fare better under the plan than they would in a Chapter 7 liquidation? Yes x No _____ Explain:

In this Chapter 11 Plan, the unsecured creditors would receive no distribution if this were a chapter 7 case. Under this Plan, The class 9 unsecured creditors with allowed claims are receiving \$ 10,000.00 (25%)

VI. Feasibility

- A. Attach Income Statement for Prior 12 Months.**
- B. Attach Cash Flow Statement for Prior 12 Months.**
- C. Attach Cash Flow Projections for Next 12 Months.**

Estimated amount to be paid on effective date of plan, including

administrative expenses. \$30,650.00

Show how this amount was calculated.

\$30,000.00	Administrative Class
\$	Taxes
\$	Unsecured Creditors
\$ 650.00	UST Fees
<u>\$30,650.00</u>	TOTAL

What assumptions are made to justify the increase in cash available for the funding of the plan?

Will funds be available in the full amount for administrative expenses on the effective date of the plan? From what source? If not available, why not and when will payments be made?

**Cash on hand \$ (Current) Attach current bank statement
How much in escrow?
\$16,352. 73 – March MOR**

**Cash on hand \$ (Estimated amount available on date of confirmation)
\$19,000.00- estimated**

If this amount is less than the amount necessary at confirmation, how will debtor make up the shortfall?

VII. Management Salaries

MANAGEMENT SALARIES

Position/Name of Person Holding Position	Salary at Time of Filing	Proposed Salary (Post-Confirmation)
Joann Jenkins	N/A	\$ 1,000.00 monthly; if funds are available. If the Debtor does not have sufficient cash flow to pay Mrs. Jenkins, she will waive her compensation in that month.

VIII. Identify the Effect on Plan Payments and Specify Each of the Following:

- 1. What, if any, Litigation is pending?**
- 2. What, if any, Litigation is Proposed or Contemplated?**

Actions to determine the extent that mortgage claims are secured:

- 506 action against Select Portfolio 1st mortgage- 1328 Virginia Ave.
- 506 action against Bayview 1st mortgage- 131 Court Street.
- 506 action against First National Bank of PA 1st mortgage New York Avenue Properties.

- D. 506 action against Chicago Title assignee of Sewickley Savings – consented to unsecured claim
- E. Objections to claims;
- F. Actions to enforce the Plan
- G. The Debtor will also file avoidance actions The Debtor may also initiate actions against Neil Metzger and anyone else involved in the diversion of funds and Wells Fargo Bank for allowing employees to open up accounts in the name of the Debtor; such accounts were used to divert funds.

IX. Additional Information and Comments

X. Certification

The undersigned hereby certifies that the information herein is true and correct to the best of my knowledge and belief formed after reasonable inquiry.

If Debtor is a corporation, attach a copy of corporate resolution authorizing the filing of this Disclosure Statement and Plan.

If Debtor is a general partnership, attach a copy of the consent agreement of all general partners to the filing of the bankruptcy.

Date: March 19, 2018

BY: /s/ Donald R. Calaiaro
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