



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE )  
)  
K'NEX LIMITED )  
PARTNERSHIP GROUP, L.P., )  
a Delaware limited partnership, )  
)  
Assignor, )  
)  
To: )  
)  
CRAIG R. JALBERT, )  
Assignee. )

C.A. No. \_\_\_\_\_

**PETITION FOR ASSIGNMENT  
FOR THE BENEFIT OF CREDITORS**

Assignee, Craig R. Jalbert, petitions for an assignment for the benefit of creditors and states in support thereof as follows:

1. 10 *Del. C.* § 7381 confers jurisdiction on this Court in this case.
2. Assignor, K'Nex Limited Partnership Group, L.P., is a Delaware limited partnership.
3. Assignee, Craig R. Jalbert, has offices in care of Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, P.O. Box 1347, Wilmington, DE 19899-1347.
4. On information and belief, Assignor is indebted to various persons, corporations, and other entities and is unable to pay its debts in full.



# EXHIBIT A

**TRUST AGREEMENT AND ASSIGNMENT FOR THE BENEFIT OF CREDITORS  
OF K'NEX LIMITED PARTNERSHIP GROUP, L.P.**

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THIS TRUST AND AGREEMENT AND ASSIGNMENT FOR THE BENEFIT OF CREDITORS ("Trust Agreement") is made and entered into this 5<sup>th</sup> day of February, 2018, by and between **K'Nex Limited Partnership Group, L.P., a Delaware limited partnership, located** at 2990 Bergey Road, Hatfield, PA 19440-1735 (hereinafter referred to as the ("Company")) and Craig R. Jalbert of Verdolino & Lowey, P.C. an accounting and financial advisory firm with offices located at 124 Washington Street, Suite 101, Foxborough, Massachusetts 02035 (Mr. Jalbert shall be hereinafter referred to as the "Trustee-Assignee").

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

WHEREAS, the Company is indebted to various persons, corporations and other entities, debts of which entity are debts of the Company and the creditors of which entity are creditors of the Company, and

WHEREAS, the Company is unable to pay its debts in full, and has decided to discontinue its business, and is desirous of transferring its property and assets to an assignee for the benefit of its creditors so that the property and assets so transferred may be expeditiously liquidated and the proceeds thereof be fairly distributed to its creditors without any preference or priority, except such preference or priority as is established and permitted by applicable law;

NOW, THEREFORE, in consideration of the Company's existing indebtedness to its creditors, the express undertakings of the Trustee-Assignee and the mutual covenants contained herein, it is hereby AGREED:

1. **Creation and Object of Trust.** There is hereby created a trust (the "Trust") the name of which is the "K'Nex Liquidating Trust" and the object of which is the orderly liquidation of the property and assets of the Company, and the distribution of the proceeds therefrom to creditors of the Company, in accordance with applicable law. The Company hereby nominates and appoints Craig R. Jalbert as Trustee-Assignee to carry out the

purpose of this Trust in accordance with its terms and conditions. The Trustee-Assignee shall have the powers and duties hereinafter set forth, and shall receive reasonable compensation for its services and reimbursement of its expenses, including, but not limited to reimbursement of its attorneys' fees and costs, which the Trustee-Assignee has or may have in the future, it being the intent of the parties to this Agreement that all fees and expenses incurred by the Trustee-Assignee or his professionals hired in anticipation of this Trust Agreement be paid by the Trustee-Assignee from the assets conveyed hereby in full as priority payments. The Trustee-Assignee may serve without bond, except to the extent a bond is required by law. The Company also hereby waives any and all actual or potential conflicts of interest that may arise as a result of the Trustee-Assignee's or his counsel's prior provision of advice and services to the Company to the fullest extent permitted by law.

2. **Transfer of Assets.** The Company does hereby grant, convey, assign, transfer and set over to the Trustee-Assignee all property and assets of the Company, whatsoever and wheresoever situated. The property and assets transferred shall include, without limitation, if any such exists, all real and personal property, tangible and intangible, including, without limitation, all cash on hand, bonds, bank accounts, all accounts receivable, all furniture, fixtures, machinery, equipment, leasehold improvements, inventory, general intangibles, patents, insurance policies, insurance premium and/or policy refunds, trade names, trademarks, franchises, service marks, and causes of action. Title to the property and assets of the Company shall immediately vest in the Trustee-Assignee for the use and purpose hereinafter set forth.

3. **Powers and Duties of Trustee-Assignee.** The Trustee-Assignee shall have, inter alia, the following powers, rights and duties:

(a) To collect any and all accounts receivable and other amounts owing to the Company, including, without limitation, insurance premiums and/or policy refunds owing to the Company.

(b) To sell, or otherwise dispose of, if such exists, all real property of the Company (including leasehold improvements and fixtures) in such manner as the Trustee-Assignee deems best. The Trustee-Assignee shall have the power to execute any and all documents necessary to effectuate a sale of said real property and to convey title to same.

(c) To sell, or otherwise dispose of, if such exists, all tangible and intangible personal property of the Company, including, but not limited to, all of its all cash on hand, bonds, bank accounts, all accounts receivable, all furniture, fixtures, machinery, equipment, leasehold improvements, inventory, general intangibles, patents, insurance policies, insurance premium and/or policy refunds, trade names, trademarks, franchises, service marks, and causes of action, at private or public sale upon such notice and upon such terms as the Trustee-Assignee deems best. The Trustee-Assignee shall have the power to employ an auctioneer to conduct such a sale and to advertise such sale in such manner as the Trustee-Assignee deems best. The Trustee-Assignee shall have the power to execute bills of sale and any other documents necessary to convey title to the Company's personal property. The Trustee-Assignee shall have the power to enter into an agreement with any party to participate in a liquidation sale with the Trustee-Assignee hereunder for the benefit of creditors sharing in the profits from such sale.

(d) To employ attorneys, accountants, appraisers, auctioneers and such additional personnel to whatever extent may be necessary to handle the administrative details of this Trust.

(e) To require all creditors of the Company to whom a balance is now owing to submit verified statements of their accounts.

(f) To settle any and all claims against or in favor of the Company with full power to compromise, or in the discretion of the Trustee-Assignee, to sue or be sued, and to prosecute or defend any claim or claims of any nature whatsoever existing against or in favor of the Company.

(g) To pay the creditors of the Company out of the monies which shall come into his hands as Trustee-Assignee, according to the following priorities:

- (1) First, all costs for the preservation of the Trust assets, including the maintenance and insurance thereon, the expenses of operation, and such other administrative expenses as shall be reasonably be incurred;
- (2) Second, all costs and expenses incidental to the administration of the Trust, including the remuneration of the Trustee-Assignee, the payment of reasonable compensation for the services of attorneys, accountants, appraisers and other professionals for the Trustee-Assignee and the cost of any required bond. These costs and expenses shall include those incidental to the preparation and execution of this Trust Agreement and any preparation of papers in connection with related court proceedings. The Trustee-Assignee shall also have the right to pay an accountant reasonable compensation for services performed in connection with the administration of this Trust and the attorneys for the Trustee-Assignee for such services as shall be rendered in aid of the administration of this Trust and its property;
- (3) Third, to the extent that such debts are entitled to priority payments under applicable law, all debts owing to the United States of America as of the date of this Trust Agreement, including, but not limited to, federal withholding tax, federal unemployment tax and other federal income, excise, property and employment taxes;
- (4) Fourth, to the extent that such debts are entitled to priority payment under applicable law, all debts owing to any state as of the date of this Trust Agreement, including, but not limited to, state employment, property and income taxes;

- (5) Fifth, all other debts owing as of the date of this Trust Agreement that are entitled to priority treatment and payment under applicable law;
- (6) Sixth, to debts owed to persons not set forth above (“other creditors”). All distributions to other creditors shall be, within each class, pro rata in accordance with the terms of each creditor’s indebtedness, until all such debts are paid in full. The Trustee-Assignee shall make interim distributions to other creditors whenever the Trustee-Assignee accumulates sufficient funds to enable it to make a reasonable distribution. No distribution to other creditors shall be in an amount less than \$100,000, except the final distribution to other creditors. Any distribution made by check which remains uncashed for a period of 150 days shall be void and unless the relevant creditor makes demand for a reissued check within 30 days of the end of the 150 day period, any funds that such check represents shall not be available for distribution to other creditors at the sole discretion of the Trustee-Assignee; and
- (7) Seventh, the surplus, if any, of the Trust’s funds, when all debts of the Trust shall have been paid in full, shall be paid and transferred to the Company by the Trustee-Assignee, or if the Company is dissolved, the Trustee-Assignee shall, in the exercise of its sole discretion, either distribute the remaining proceeds in accordance with applicable law or donate such surplus to the Combined Campaign for Justice then in effect in the state of Delaware.

Notwithstanding any of the foregoing, to the extent applicable law require payment of certain claims or class of claims in a priority other than as set forth above (including, without limitation, the claims of any taxing authority and the claims of any secured creditors), such claims shall be paid in accordance with applicable law, and not in the priority set forth above.

(h) To do and perform any and all other acts necessary and proper for the orderly liquidation or other disposition, including, but not limited to, abandonment, of the property and assets of the Company and the distribution of the proceeds derived therefrom to the creditors of the Company.

(g) To authorize and complete the wind down of any employee healthcare plans and the K’NEX Limited Partnership Group Employees 401(k) Plan.

(h) To cooperate with Marcum LLP (“Marcum”) in connection with Marcum’s preparation on behalf of the Company of any necessary tax returns for 2017 and 2018, including, but not limited to, providing Marcum with access to any documentation that the Trustee-Assignee can reasonably access and provide.

4. **Employment of Counsel of Trustee-Assignee.** It is hereby represented, consented, and agreed by the parties that Derek C. Abbott, of the law firm of Morris Nichols Arsht & Tunnell, LLP, located at 1201 North Market Street, 18th Floor, Wilmington, DE 19801, shall be employed to act as attorney for the Trustee-Assignee, and shall render such legal services, along with other attorneys from that firm, as the Trustee-Assignee requires during the existence of this Trust. Additional special counsel may be retained by the Trustee-Assignee should he deem the same necessary to prosecute or defend any legal or equitable action or to perform such other duties as may be required in the circumstances. The Company and the Trustee-Assignee also hereby waive any and all actual or potential conflicts of interest that may arise from Mr. Abbott’s or his firm’s prior representation of the Company to the fullest extent permitted by law.

5. **Rights of Creditors.** All rights and remedies of the creditors against any surety or sureties for the Company are hereby expressly reserved and nothing herein contained shall prevent the creditors or any of them from suing any third parties or persons who may be liable to any of the creditors for all or any part of their claims against the Company, or from enforcing or otherwise obtaining the full benefit of any mortgage, charge, pledge, lien or other security which they now hold on any property, creditors or effects of the Company.



6. **Administration of Trust.** This Trust shall be administered out of court, except to the extent otherwise required by Delaware law or other state law or deemed appropriate by the Trustee-Assignee in the exercise of his sole discretion. The Trustee-Assignee shall, however, have the right to ask any court of competent jurisdiction for a declaratory judgment or such other relief as the Trustee-Assignee may deem necessary, if, in his opinion, said action is desirable in connection with any dispute or claim arising hereunder.

7. **Liability of Trustee-Assignee.** It is understood and agreed that the Trustee-Assignee is to assume no personal liability or responsibility for any of its acts as Trustee-Assignee herein, but its obligation shall be limited to the performance of the terms and conditions of the Trust Agreement, in good faith and in the exercise of its best judgment.

8. **Warranties of the Company.** The Company hereby warrants and agrees as follows:

(a) The list of creditors delivered concurrently herewith to the Trustee-Assignee is complete and correct as reflected by the books and records of the Company, or through its officers and directors, as to names of said creditors, their addresses and the amounts due them.

(b) The Company, through its officers, directors, partners and employees, shall perform any and all acts reasonably necessary and proper to assist the Trustee-Assignee in the orderly liquidation of the Company's assets and the collection of monies owing to the Company, and in the distribution of said monies and the proceeds of asset sales to the Company's creditors; provided, however, the officers and directors of the Company shall only

provide such assistance to the Trustee-Assignee to the extent, and on the condition that, they are reasonably compensated for such services.

9. **Acceptance by Trustee-Assignee.** The Trustee-Assignee does hereby accept the Trust herein created and agrees to faithfully perform the same according to the best of the Trustee-Assignee's skill, knowledge and ability. It is understood that the Trustee-Assignee shall receive reasonable compensation for his services rendered in connection with this Trust.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

K'NEX LIMITED PARTNERSHIP GROUP, L.P.

By: 

Its: President & CEO

COMPANY'S WITNESSES :



Bruce Meier, CFO of K'NEX

**ACCEPTANCE**

I, Craig R. Jalbert, in his capacity as Trustee –Assignee and not individually, do hereby accept the Trust herein set forth, not individually, but as Trustee-Assignee, subject to the conditions set forth above.

Craig R. Jalbert

**TRUSTEE-ASSIGNEE'S WITNESSES :**

Thomas C. Burt  
Rynda J. White



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE )  
)  
K'NEX LIMITED )  
PARTNERSHIP GROUP, L.P., )  
a Delaware limited partnership, )  
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Assignor, )  
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)  
To: )  
)  
CRAIG R. JALBERT, )  
Assignee. )

C.A. No. \_\_\_\_\_

**VERIFICATION**

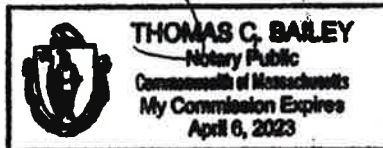
STATE OF Mass. )  
) SS:  
COUNTY OF Norfolk )

I, Craig Jalbert, being duly sworn, hereby verify and affirm that I have read the foregoing **Petition for Assignment for the Benefit of Creditors** and that the facts recited therein are true and correct to the best of my knowledge, information and belief.

Craig Jalbert, solely in his limited capacity as Assignee for the Benefit of Creditors of K'Nex Limited Partnership Group, L.P., Verdolino & Lowey, P.C.  
124 Washington Street, Suite 101  
Foxboro, MA 02035

SWORN AND SUBSCRIBED before me on this 7<sup>th</sup> day of February, 2018

Thomas C. Bailey  
Notary Public





SUPPLEMENTAL INFORMATION PURSUANT TO RULE 5(A)  
OF THE RULES OF THE COURT OF CHANCERY

The information contained herein is for the use by the Court for statistical and administrative purposes only. Nothing stated herein shall be deemed an admission by or binding upon any party.

- 1. Caption of Case: K'Nex Limited Partnership Group, L.P., a Delaware limited partnership, Assignor, TO: Craig R. Jalbert, Assignee
- 2. Date Filed: February 7, 2018
- 3. Name and address of counsel for plaintiff(s):  
Derek C. Abbott (#3367)

MORRIS, NICHOLS, ARSHT & TUNNELL LLP  
1201 North Market Street, 16<sup>th</sup> Floor  
Wilmington, DE 19801  
(302) 658-9200

- 4. Short statement and nature of claim asserted: Petition for Assignment for the Benefit of Creditors.

- 5. Substantive field of law involved (check one):
 

<input type="checkbox"/> Administrative law	<input type="checkbox"/> Labor law	<input type="checkbox"/> Trusts, Wills and Estates
<input type="checkbox"/> Commercial law	<input type="checkbox"/> Real Property	<input type="checkbox"/> Consent trust petitions
<input type="checkbox"/> Constitutional law	<input type="checkbox"/> 348 Deed Restriction	<input type="checkbox"/> Partition
<input type="checkbox"/> Corporation law	<input type="checkbox"/> Zoning	<input type="checkbox"/> Rapid Arbitration (Rules 96, 97)
<input type="checkbox"/> Trade secrets/trade mark/or other intellectual property		<input checked="" type="checkbox"/> Other

- 6. Related cases, including any Register of Wills matters (this requires copies of all documents in this matter to be filed with the Register of Wills):

- 7. Basis of court's jurisdiction (including the citation of any statute(s) conferring jurisdiction):  
10 Del. C. § 7381 confers jurisdiction on this Court in this case.

- 8. If the complaint seeks preliminary equitable relief, state the specific preliminary relief sought.

- 9. If the complaint seeks a TRO, summary proceedings, a Preliminary Injunction, or Expedited Proceedings, check here . (If #9 is checked, a Motion to Expedite must accompany the transaction.)

- 10. If the complaint is one that in the opinion of counsel should not be assigned to a Master in the first instance, check here and attach a statement of good cause.

*D. Abbott*

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Derek Abbott (No. 3367)  
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Wilmington, DE 19899-1347  
T: 302-658-9200/F: 302-658-3989  
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