

NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
Sacramento, California 95811
Telephone: (916) 445-1888

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of
MEGA RV CORP. dba MCMAHONS RV,

Protestant,

v.

ROADTREK MOTORHOMES, INC.,

Respondent.

Protest No. PR-2198-10

In the Matter of the Protest of
MEGA RV CORP. dba MCMAHONS RV,

Protestant,

v.

ROADTREK MOTORHOMES, INC.,

Respondent.

Protest No. PR-2199-10

In the Matter of the Protest of
MEGA RV CORP. dba MCMAHONS RV,

Protestant,

v.

ROADTREK MOTORHOMES, INC.,

Respondent.

Protest No. PR-2200-10

In the Matter of the Protest of
MEGA RV CORP. dba MCMAHONS RV,

Protest No. PR-2201-10

Protestant,

v.

ROADTREK MOTORHOMES, INC.,

Respondent.

DECISION

At its regularly scheduled meeting of May 5, 2010, the Public and Dealer Members of the Board met and considered the administrative record and Administrative Law Judge's "Proposed Order Granting Respondent's Motion to Dismiss Consolidated Protests with Respect to Protest No. PR-2198-10; Proposed Order Granting Respondent's Motion to Dismiss Protest (PR-2200-10)" in the above-entitled matter. After such consideration, the Board adopted the Proposed Order.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 5th DAY OF MAY 2010.


ROBERT T. (TOM) FLESH
President
New Motor Vehicle Board

1 NEW MOTOR VEHICLE BOARD
1507 - 21ST Street, Suite 330
2 Sacramento, California 95811
Telephone: (916) 445-1888

CERTIFIED MAIL

3
4
5
6
7
8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
10

11 In the Matter of the Protest of
12 MEGA RV CORP. dba MCMAHONS RV,
13 Protestant,
14 v.
15 ROADTREK MOTORHOMES, INC.,
16 Respondent.

Protest No. PR-2198-10

**PROPOSED ORDER GRANTING
RESPONDENT'S MOTION TO
DISMISS CONSOLIDATED
PROTESTS WITH RESPECT TO
PROTEST NO. PR-2198-10;
PROPOSED ORDER GRANTING
RESPONDENT'S MOTION TO
DISMISS PROTEST (PR-2200-10)**

17 In the Matter of the Protest of
18 MEGA RV CORP. dba MCMAHONS RV,
19 Protestant,
20 v.
21 ROADTREK MOTORHOMES, INC.,
22 Respondent.

Protest No. PR-2199-10

**ORDER DENYING RESPONDENT'S
MOTION TO DISMISS
CONSOLIDATED PROTESTS WITH
RESPECT TO PR-2199-10 AND PR-
2201-10**

23 In the Matter of the Protest of
24 MEGA RV CORP. dba MCMAHONS RV,
25 Protestant,
26 v.
27 ROADTREK MOTORHOMES, INC.,
28 Respondent.

Protest No. PR-2200-10

1 In the Matter of the Protest of
2 MEGA RV CORP. dba MCMAHONS RV,
3 Protestant,
4 v.
5 ROADTREK MOTORHOMES, INC.,
6 Respondent.

Protest No. PR-2201-10

7
8 To: Michael M. Sieving, Esq.
Tina Hopper, Esq.
9 Attorneys for Protestant
LAW OFFICES OF MICHAEL M. SIEVING
10 1801 Park Court Place, Suite F-101
Santa Ana, California 92701

11 James D. McNairy, Esq.
12 Attorney for Respondent
SEYFARTH SHAW LLP
13 400 Capitol Mall, Suite 2350
Sacramento, California 95814-4428

14 Louis S. Chronowski, Esq.
15 Kavitha Janardhan, Esq.
Attorneys for Respondent
16 SEYFARTH SHAW LLP
17 131 South Dearborn Street, Suite 2400
Chicago, Illinois 60603

18
19 **IDENTITY AND STATUS OF THE PARTIES**

20 1. Protestant, Mega RV Corp., dba McMahan's RV ("McMahan's"), is a new motor vehicle
21 dealer as defined in Vehicle Code section 426¹, and is licensed as such by the Department of Motor
22 Vehicles ("DMV").

23 2. Respondent, Roadtrek Motorhomes, Inc. ("Roadtrek"), with its head office at 100 Shirley
24 Avenue, Kitchener, Ontario, Canada N2B 2E1, is a division of Hanmar Motor Corporation, a company
25 incorporated under the laws of the Province of Ontario. Roadtrek is licensed by the DMV as a

26 ///

27 _____
28 ¹ Unless otherwise indicated, all later statutory references shall be to the California Vehicle Code.

1 manufacturer.²

2 3. McMahon's operates recreational vehicle (RV)³ dealerships at the following locations in
3 issue:⁴

4 a. 5060 Scotts Valley Road, Scotts Valley, California 95066 (PR-2198-10) ("McMahon's
5 Scotts Valley");

6 b. 1313 RV Center Drive,⁵ #12, Colton, California 92324 (PR-2199-10) ("McMahon's
7 Colton");

8 c. 77850 Varner Road, Palm Desert, California 92211 (PR-2200-10) ("McMahon's Palm
9 Desert"); and,

10 d. 6441 Burt Road, #10, Irvine, California 92618 (PR-2201-10) ("McMahon's Irvine").

11 4. There is no dispute that McMahon's Colton, McMahon's Irvine, and McMahon's Scotts
12 Valley are franchisees of Roadtrek. Roadtrek has filed one motion to dismiss as to the three protests
13 filed by these franchisees.

14 5. However, Roadtrek asserts that McMahon's Palm Desert is not a Roadtrek franchisee and
15 has filed a separate motion to dismiss as to the protest filed by McMahon's Palm Desert.

16 PROCEDURAL BACKGROUND

17 6. On February 18, 2010, at the joint request of the parties and by order of the Board,
18 these four protests were consolidated for purposes of discovery and hearing on their merits.

19 7. On February 25, 2010, Roadtrek filed "Respondent's Motion to Dismiss Consolidated
20 Protests" and "Respondent's Motion to Dismiss Protest" (PR-2200-10).

21
22 ² Section 672 defines "vehicle manufacturer" as follows:

23 (a) "Vehicle manufacturer" is any person who produces from raw materials or new basic components a vehicle
24 of a type subject to registration under this code, off-highway motorcycles or all-terrain vehicles subject to
identification under this code...

25 ³ Section 415(c) provides: (c) For purposes of Chapter 6 (commencing with Section 3000) of Division 2, "motor
26 vehicle" includes a recreational vehicle as that term is defined in subdivision (a) of Section 18010 of the Health and
Safety Code, but does not include a truck camper.

27 ⁴ The Protests are listed here in order of the Protest numbers assigned to them. However, the order of discussion below will
be based upon the facts and issues raised by the motions to dismiss.

28 ⁵ The Dealer Agreement, attached as Exhibit A to the protest, identifies the address as "1312 RV Center Drive..." while the
protest indicates "1313 RV Center Drive..."

1 8. On March 15, 2010, after the submission of briefs by each side, a hearing on the
2 motions to dismiss was held before Administrative Law Judge Anthony M. Skrocki.

3 **PRELIMINARY STATEMENT OF ISSUES**

4 **THE ALLEGATIONS OF THE FOUR PROTESTS FILED BY McMAHON'S**

5 9. Among other things, each of the four protests alleges that: The specific McMahon's
6 dealership is a franchisee of Roadtrek; By the terms of the franchises, each dealership has an exclusive
7 territory; Roadtrek intends to establish an additional Roadtrek dealership within the exclusive territory
8 assigned to each dealer; This would constitute a modification of the franchises that would substantially
9 affect the franchisee's sales and service obligations and investments (as the dealers would no longer
10 have an exclusive territory); and, Roadtrek is doing this in violation of Section 3070 as no notices were
11 received by the Protestants or by the Board.

12 **THE MOTIONS TO DISMISS FILED BY ROADTREK⁶**

13 10. Roadtrek has filed two motions to dismiss. One motion, "Respondent's Motion to
14 Dismiss Consolidated Protests", relates to the protests of McMahon's Colton, McMahon's Irvine, and
15 McMahon's Scotts Valley (herein referred to as "Consolidated Motion"). The other motion,
16 "Respondent's Motion to Dismiss Protest" (PR-2200-10) relates to just the McMahon's Palm Desert
17 protest (herein "Palm Desert Motion"). Both motions as to all four protests assert that the Board has no
18 jurisdiction to act on the protests.

19 11. The Consolidated Motion among other things alleges that the Board has no jurisdiction to
20 hear the protests as there is no modification of the franchises.

21 12. The Palm Desert Motion asserts that the Board has no jurisdiction to hear the protest as
22 there is no franchise between the parties for the Palm Desert location.

23 **The Consolidated Motion**

24 13. This motion seeks dismissal of the protests of McMahon's Colton, McMahon's Irvine,
25

26 ⁶ Protestants also filed four Section 3075 warranty reimbursement protests and four Section 3076 franchisor incentive program
27 reimbursements (PR-2205-10 through PR-2212-10). A "Proposed Order Granting Respondent's Motion to Dismiss Protest
28 No. PR-2207-10 and PR-2210-10" (McMahon's Palm Desert) is being considered at the May 5, 2010, General Meeting.
Respondent's motion to dismiss with respect to McMahon's Colton (PR-2205-10 and PR-2206-10), McMahon's Irvine (PR-
2208-10 and PR-2212-10), and McMahon's Scotts Valley (PR-2209-10 and PR-2211-10) was denied.

1 and McMahon's Scotts Valley and asserts among other things⁷ that, because the three Protestants are not
2 in good standing as defined in the franchises, even if Roadtrek did intend to establish an additional
3 dealership in each of the three territories assigned to Protestants doing so would not constitute
4 modifications of the franchises. If there are no modifications, Roadtrek was not required to send any
5 notices to the Protestants and the Board and the Board has no jurisdiction as to any of these three
6 protests.

7 14. To reach this conclusion would require findings in favor of Roadtrek's contentions that
8 may be looked upon as akin to those needed to grant a summary judgment that there are no triable issues
9 of fact or further interpretation of the contracts needed. This would require there be findings as a matter
10 of law that:

11 (1) The three franchisees are not in "good standing". This would require a determination as
12 to what provisions of the franchises apply to this requirement and that there are no triable issues of fact
13 that the franchisees are not in good standing under these provisions as claimed by Roadtrek;

14 (2) Because of the loss of status of "good standing", the franchises permit Roadtrek to
15 appoint additional dealers in what had been the Protestants' exclusive territories as granted by the
16 franchises;

17 (3) That Roadtrek has complied with the terms of its franchises; this would require both a
18 legal determination as to the meaning and application of the terms of the franchises as well as a factual
19 determination as to whether Roadtrek has complied with those terms. This could include for example

20

⁷ Another contention of Roadtrek is that Section 3072(b)(5) precludes these protests. (Motion, page 5, lines 5-22) Section
21 3072(b) states as follows:

22 (b) Subdivision (a) does not apply to any of the following:

23 ...
24 (5) A motor vehicle dealership protesting the location of another dealership with the same recreational vehicle
25 line-make within its relevant market area, if the dealership location subject to the protest was established on or
26 before January 1, 2004.
27 ...

28 The "Subdivision (a)" referred to is Section 3072(a) which applies to protests challenging the establishment of an additional
dealership. The protests here were filed under Section 3070(b), and are challenging modifications of the franchises. The
section relied upon by Roadtrek expressly refers to Section 3072(a) only and has no application to protests filed under
Section 3070(b). In addition, it is likely that Section 3072(b)(5) was intended to apply as a transitional section applicable to
those dealerships established after the bill was enacted but before it became effective. The language of the section is less
than artful in its reference to the "relevant market area" and if applied as suggested by Roadtrek would lead to results that
could not have been intended by the legislature considering the intent of Section 3072(a).

1 whether the franchises require Roadtrek to provide notice of its intent to change the territories assigned
2 to the franchisees and if so whether Roadtrek complied with that requirement.

3 (4) The loss of the exclusive territory is not a modification of the franchise as Roadtrek is
4 merely doing what it is permitted to do by the terms of the franchise. This would require taking into
5 consideration, notwithstanding what the terms of the franchise permit, whether, Roadtrek must first
6 comply with the provisions of the Vehicle Code, in particular Section 3070(b) which reads in part, "(1)
7 Notwithstanding... the terms of any franchise, a franchisor of a dealer of recreational vehicles may not
8 modify or replace a franchise with a succeeding franchise if the modification or replacement would
9 substantially affect the franchisee's sales or service obligations or investment, unless the franchisor has
10 first given the board and each affected franchisee written notice thereof at least 60 days in advance of
11 the modification or replacement...."

12 After considering all of the above, the Board would have to agree with the conclusion urged by
13 Roadtrek which is that,

14 (5) The Board has no jurisdiction to hear the protests.

15 **The Palm Desert Motion**

16 15. There is a separate motion to dismiss that seeks dismissal of the protest filed by
17 McMahan's Palm Desert. In this motion, Roadtrek asserts that the Board has no jurisdiction to hear the
18 McMahan's Palm Desert protest as Roadtrek alleges that there is no franchise in existence between
19 Roadtrek and any McMahan's entity for the Palm Desert location.

20 **THE VEHICLE CODE PROVISIONS APPLICABLE TO ALL FOUR OF THE PROTESTS**

21 16. Section 3070(b)(1) provides in part:

22 Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of
23 any franchise, a franchisor of a dealer of recreational vehicles may not modify or replace
24 a franchise with a succeeding franchise if the modification or replacement would
25 substantially affect the franchisee's sales or service obligations or investment, unless the
26 franchisor has first given the board and each affected franchisee written notice thereof at
27 least 60 days in advance of the modification or replacement. Within 30 days of receipt of
a notice satisfying the requirements of this section, or within 30 days after the end of any
appeal procedure provided by the franchisor, a franchisee may file a protest with the
board and the modification or replacement does not become effective until there is a
finding by the board that there is good cause for the modification or replacement.
(Underline added.)

28 ///

1 17. There is no dispute that Roadtrek did not give “the board and each affected franchisee
2 written notice” of modification as may be required by the statute quoted above.

3 18. The dispute as raised by the motions to dismiss is whether there was or will be
4 modifications of the franchises and if so whether Section 3070(b)(1) applies to those modifications.

5 **THE FRANCHISES APPLICABLE TO THE FOUR DEALERSHIPS**

6 **McMAHON’S COLTON AND McMAHON’S IRVINE; McMAHON’S SCOTTS VALLEY**

7 19. There are two franchise documents for these three franchisees.

8 20. There is one franchise document that established both McMahon’s Colton and
9 McMahon’s Irvine as Roadtrek franchisees. This document was signed by the parties in 2006 with
10 identical terms for both franchisees.

11 21. There is a separate franchise document that established McMahon’s Scotts Valley as a
12 Roadtrek franchisee. This document was signed by the parties in 2008 and its terms differ from the
13 2006 document for McMahon’s Colton and McMahon’s Irvine.

14 22. Although only one motion to dismiss was filed jointly as to the protests of McMahon’s
15 Colton, McMahon’s Irvine, and McMahon’s Scotts Valley, because the terms of the 2006 franchise
16 (McMahon’s Colton and McMahon’s Irvine) and the terms of the 2008 franchise (McMahon’s Scotts
17 Valley) differ, the two documents require separate discussion.

18 **McMAHON’S PALM DESERT**

19 23. The second motion to dismiss is applicable to this protest alone and alleges that
20 McMahon’s Palm Desert is not a Roadtrek franchisee as there was never a “franchise” between the
21 parties. This will also require separate discussion.

22 **THE 2006 FRANCHISE APPLICABLE TO McMAHON’S COLTON AND TO McMAHON’S IRVINE**

23 24. There is one franchise (attached as Exhibit 1) that applies to both McMahon’s Colton
24 and McMahon’s Irvine locations. The franchisor was identified as “HOME & PARK
25 MOTORHOMES, a division of HANMAR MOTOR CORPORATION” (hereinafter called “Home &

26 ///

27 ///

28 ///

1 Park”).⁸ The “Dealer” was identified as “MEGA RV CORPORATION, doing business as
2 MCMAHON’S RV, having its head office at 1312 RV Center Dr. #16, Colton, CA, USA, 92324 and
3 doing business at 1312 RV Center Dr (sic) #16, Colton, CA, 92324 and at 6441 Burt Road #10, Irvine,
4 CA, 92618 (hereinafter called “Dealer”).”

5 25. This franchise was signed in behalf of “MEGA RV CORPORATION doing business as
6 MCMAHON’S RV” by Brent McMahon, President, on February 21, 2006. It was “ACCEPTED BY:
7 HOME & PARK MOTORHOMES, a division of HANMAR MOTOR CORPORATION” and signed by
8 Jim Hammill, General Manager, on February 22, 2006.

9 26. Some of the relevant language of this franchise includes the following:

10 **107 Selling Agreement⁹**

11 Dealer shall have the **exclusive** right to purchase, display and resell Roadtreks, parts and
12 accessories in the Territory as mutually agreed to by Dealer and Home & Park, ...
(Emphasis added.)

13 **108 Dealer Territory (Primary Area of Market Responsibility)**

14 Dealer territory shall be limited to an area within 60 miles radii of Irvine, California,
15 Colton, California and Stanton, California.¹⁰ So long as Dealer remains in good standing
16 during the terms of this Agreement, Home & Park will not locate another dealer within
17 Dealer’s territory. (Emphasis added.)

18 **109 Dealer Stocking of Roadtreks**

19 Dealer acknowledges that **to remain in good standing** under this Agreement, subject to
20 product availability, new Roadtreks must be stocked and prominently displayed at each of
21 Dealer’s sales outlets within Dealer’s territory according to the following schedule:

Six(6)	170 Model
Six(6)	190 Model
Four (4)	210 Model
Six(6)	RS Model

22 (Emphasis added.) (The total comes to 22 Roadtrek RVs that must be stocked.)

23
24 ⁸ This 2006 Dealer Agreement identifies the franchisor as indicated here “Home & Park Motorhomes” and uses the name
25 “Roadtrek” only to describe the products that are sold by Home & Park. As the parties in their pleadings before the Board
26 refer to the franchisor/Respondent as “Roadtrek Motorhomes, Inc.” (“Roadtrek”), unless using “Home & Park” in quoting
27 from the documents, Roadtrek is the name that will be used herein to identify the franchisor.

28 ⁹ In most places, the franchises refer to the numbered text as “clauses” and rarely as “sections”. They will be referred to as
“clauses” herein.

¹⁰ The two McMahon dealerships covered by this franchise are in Colton and Irvine and it is assumed that the territory for
each of these dealerships would be a circle with a radius of 60 miles measured from each of their addresses at those locations.
The significance of a territory within a radius of 60 miles from Stanton was not explained.

1 27. A reading of Clauses 107, 108 and 109 lead to the interpretation that, so long as Dealer
2 remains in good standing, Dealer has the exclusive right to purchase, display and resell Roadtrek
3 products within a 60 mile radius of Dealer's location, with "good standing" as it relates to Clause 108
4 requiring only that dealer comply with the stocking requirements of Clause 109.

5 28. Although there are no other express references to what is required to "remain in good
6 standing", there are other requirements imposed upon Dealer, including the following:

7 **111 Dealer Commitment**

8 Dealer agrees to purchase for retail sale a minimum of one hundred (100) new and
9 demonstrator Roadtreks per calendar year. Dealer will be considered in breach of this
10 agreement in the event that Dealer does not purchase and take delivery of 25 Roadtreks by
11 March 31st, 50 by June 30th, 75 by September 30th, and 100 by December 31st of each year.

12 29. As can be seen, Clause 109 states that stocking the 22 Roadtreks indicated is necessary
13 for the Dealer to "remain in good standing", whereas the failure to purchase and take delivery of 25
14 units per quarter for a total of 100 units each year will constitute a "breach of this agreement".

15 30. Complicating matters further is the following language which could have an effect upon
16 whether Roadtrek can establish additional dealers in the two territories in question here:

17 **520 Home & Park Termination**

18 Home & Park shall not, directly or through any officer, agent or employee terminate,
19 cancel, fail to renew or substantially change the material terms of this Agreement
20 (including the Territory)¹¹ without good cause. (Emphasis added.)

21 Except in instances of the insolvency or bankruptcy of Dealer, or assignment for the
22 benefit of creditors by Dealer or failure to meet sales commitments in section 111 (sic),
23 Home & Park shall provide Dealer at least 365 days prior written notice of termination,
24 cancellation, failure to renew or substantial change in the material terms of this
25 Agreement. The notice shall state all the reasons for such action. (Emphasis added.)

26 **530 Good Cause**

27 For purposes of this Agreement, "good cause" shall include:

28 ...
2. Any **material breach** of this Agreement including but not limited to clauses 109,
29 111, 112, 120, 140, 172, 187, 189, 190, 192, 210, 301, 320, 330, 360, 370, 375 and
30 600; (Emphasis added.)
31 ...

32 _____
33 ¹¹ The parenthesis, the text therein, and the capitalization of "Territory" are as stated in the franchise.

1 31. Of the many clauses listed in Clause 530(2) above are Clause 109 (relating to the
2 minimum stocking requirements of 22 units), and Clause 111 (relating to the minimum purchase
3 requirements of 25 units per quarter for a total of 100 each year).

4 32. Thus it appears that the franchise has established the following standards that must be
5 met by dealer:

6 a. An obligation to stock and display a minimum inventory of at least 22 Roadtreks of the
7 models stated (Clauses 108 and 109);

8 b. An obligation to purchase 25 Roadtreks (with no models stated) every calendar quarter
9 for a total of 100 per year (Clause 111); and,

10 c. There is an obligation to meet "sales commitments" (Clause 111) of some unstated
11 quantity.

12 33. Each clause imposes a different obligation upon dealer but may trigger the same or
13 overlapping rights in Roadtrek. For example, it appears that the failure of Dealer to meet the stocking
14 requirement of Clause 109 gives Roadtrek several choices. Failure to meet the stocking requirements
15 could eliminate the Dealer from being "in good standing" which permits Roadtrek to appoint another
16 dealer in that 60 mile territory designated as Dealer's Territory. The effect of this is to deprive the
17 Dealer of its right to be the exclusive Dealer in that Territory as provided in Clause 107. Roadtrek
18 could also claim the failure to comply with Clause 109 or 111 constitutes "material breach" and "good
19 cause" under Clauses 520 and 530 for Roadtrek to, among other things, "substantially change the
20 material terms of this Agreement (including the Territory)".

21 34. However, unless the "good cause" is due to "insolvency or bankruptcy of Dealer, or
22 assignment for the benefit of creditors by Dealer or failure to meet sales commitments (sic) in section

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 (sic) 111”¹² Roadtrek must “provide Dealer at least 365 days prior written notice of ... substantial change
2 in the material terms of the Agreement.” (Emphasis added.) And, the notice shall include all the reasons
3 for such action.

4 35. Therefore it appears that:

- 5 ■ A Dealer is granted an exclusive territory by the terms of Clause 107.
- 6 ■ A Dealer’s exclusive territory will continue so long as Dealer remains in good standing
7 (Clause 108).
- 8 ■ A Dealer will cease to be in good standing if the Dealer does not stock the minimum
9 inventory (22 units) as required by Clause 109.
- 10 ■ If a Dealer is no longer in good standing, the Dealer will lose its right to the exclusive
11 territory and Roadtrek would be permitted to “locate another dealer within Dealer’s
12 territory.” (Clause 108).

13 36. In addition to the franchise stating that the failure to maintain the minimum inventory
14 results in the loss of “good standing”, the franchise also states the following:

- 15 ■ Failing to purchase the minimum number of units on a quarterly and yearly basis is a “breach
16 of this agreement”. (Clause 111).
17 (The numbers required to be purchased - 100 per year - are not the same as the numbers
18 required for the “minimum inventory” - 22 at any given time.)
- 19 ■ Roadtrek cannot substantially change the material terms of this Agreement (including the
20 Territory) without good cause. (Clause 520).
- 21 ■ “Good cause” under the agreement includes “Any material breach”, which includes but is not
22

23 ¹² This is puzzling as Clause 111 (not “section” 111) does not expressly apply to “sales commitments”. It is captioned
24 “Dealer Commitment” and requires that the Dealer “purchase” a specified quantity of new “and” demonstrator Roadtreks per
25 quarter and per year. In addition it precludes dualing with another Class B manufacturer but only if doing so will impact the
26 ability of Dealer to meet or exceed the terms of the agreement. The only reference to any “sales commitments” in Clause 111
27 is in the following, which is the entire remainder of the clause. “Additionally, Home & Park will work with Dealer to expand
28 his operation effectively, subject to our normal conditions, as long as that expansion does not encroach on other dealers’
territories. Such expansions may require changes to stocking levels for each location and also to minimum sales
commitments. [This indicates that “stocking levels” and “sales commitments” are not the same.] These expansions will be
negotiated at the time of the expansion. If Dealer expands his operation to new locations, Roadtrek will be the number one
selling Class B motorhomes at those locations. Additionally, Home & Park will ensure that Dealer receives first priority on
new product in the State of California.”

1 limited to Clause 109 (stocking inventory of 22 units identified by model) and Clause 111
2 (minimum quarterly purchases of 25 and annual purchases of 100 units, identified only as
3 “new and demonstrator Roadtreks” but not by model number.)

4 37. Unless there is a bankruptcy, assignment for benefit of creditors, or “failure to meet sales
5 commitments in section (sic) 111” Roadtrek must provide Dealer with at least 365 days prior written
6 notice of ... substantial change in the material terms of this Agreement (including the Territory)” stating
7 “all the reasons for such action.” (Clause 520).

8 38. Said another way, if the claimed breach is Clause 109 (the failure to maintain stocking
9 minimums), Roadtrek must provide written 365 days notice before the franchise permits Roadtrek to
10 make a change in the material terms of the Agreement, “including the Territory”.¹³

11 39. Therefore, if there has been a Clause 111 “substantial change in the material terms of this
12 Agreement”, Roadtrek must comply with the terms of its own contract in providing notice to its
13 franchisees. And, if there has been or will be a modification which would substantially affect the
14 franchisee’s sales or service obligations or investment, Roadtrek must comply with the requirements of
15 the California legislature as stated in Section 3070(b). (See footnote 13).

16 40. Among the questions that cannot be resolved is what interrelationship there is between
17 the failure to stock the required inventory under Clause 109 (which is needed to remain in “good
18 standing”) and that same failure to stock required inventory as being a “material breach” and “good
19 cause” for Roadtrek to claim a right to make “substantial change in the material terms of this Agreement
20 (including the Territory)” (Clause 520) but only if Roadtrek first provides 365 days prior written notice
21 of its intent to do so. (Clause 530).

22 41. Is the failure to stock the required inventory as stated in Clause 109, both a failure to be
23

24 ¹³ Of course, complying with the terms of the franchise itself as to a modification of the franchise does not automatically
25 satisfy the requirements of the Vehicle Code as to intended franchise modifications. Section 3070(b) begins with the
26 following language:

27 Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, a
28 franchisor of a dealer of recreational vehicles may not modify or replace a franchise with a succeeding
franchise if the modification or replacement would substantially affect the franchisee's sales or service
obligations or investment, unless the franchisor has first given the board and each affected franchisee written
notice thereof at least 60 days in advance of the modification or replacement.
(Emphasis added.)

1 in good standing and also a material breach and thus good cause pursuant to Clause 530 to allow
2 Roadtrek to make a substantial change in the material terms of the franchise, including “the Territory”?
3 Is “the Territory” a material term? Clause 520, by its very terms leads to that conclusion, as it
4 specifically refers to “the Territory” as being a material term of the “Agreement”.¹⁴

5 42. But, is the change that will occur a “substantial change” in that material term? Clause
6 520 merely precludes Roadtrek from making a “substantial change” in a “material term”. What facts
7 would be needed to make such determinations? The actual distance of the new dealer from the existing
8 franchisee? Is the new dealer going to be 49 miles away or 11 miles away? The population? The
9 geography?¹⁵ And if “the Territory” is a material term that will be substantially changed, what would
10 constitute “good cause” for that change?

11 43. As can be seen, in regard to the terms of the franchise alone, there is a need to determine
12 if:

- 13 (a) “The Territory” granted in the franchise is a “material term”;
- 14 (b) Whether the appointment of the additional dealer in “the Territory” will constitute a
15 “substantial change” in that “material term”;
- 16 (c) Whether Roadtrek has “good cause” to change “the Territory”; and
- 17 (d) Whether if there will be “good cause” to permit Roadtrek to make a “substantial change”
18 in a “material term” whether Roadtrek is required to “provide” 365 days notice of its intended change;
19 and if so,
- 20 (e) Whether Roadtrek has complied with the terms of the franchise.

21 44. Roadtrek may have the contractual right to make the change because Dealer’s conduct or
22 lack thereof (violation of Clause 109) gives rise to that claimed right under two clauses of the franchise,
23 one relating to loss of “good standing” and the other to being in “breach”, both of which could lead to
24 the change in the Territory of the dealer. Clause 520 expressly states that Roadtrek shall not

25 _____
26 ¹⁴ Clause 520 Home & Park Termination provides in part as follows:

27 Home & Park shall not, directly or through any officer, agent or employee terminate, cancel, fail to renew or substantially
28 change the material terms of this Agreement (including the Territory) without good cause. (Emphasis added.)

¹⁵ A circle with a radius of 60 miles would cover an area of 11,304 square miles. (Calculated by the formula radius squared times pi, which is $60 \times 60 = 3,600 \times 3.14 = 11,304$).

1 substantially change the material terms of this Agreement (including the Territory) without good cause.
2 This language, which is later in the contract than the language pertaining to the loss of in good standing,
3 expressly refers to what must exist before there can be changes in the "Territory". Then, the very next
4 paragraph provides what must be done by Roadtrek if it desires to make such changes, which is to
5 provide 365 days prior written notice to Dealer.

6 45. Based upon what is presently before the Board, there are insufficient facts to establish
7 that these various provisions are clearly applicable, have been satisfied, and can be interpreted as leading
8 only to the simple conclusion that Roadtrek seeks here - which is that, as a matter of law, there are no
9 modifications of the terms of the franchises.

10 **DISCUSSION OF THE MOTION TO DISMISS THE PROTESTS**
11 **OF MCMAHON'S IRVINE AND MCMAHON'S COLTON¹⁶**

12 **THE FRANCHISE OF MCMAHON'S IRVINE AND MCMAHON'S COLTON**

13 46. Roadtrek in its motion to dismiss states that Roadtrek "recently appointed Mike
14 Thompson's RV as an additional dealer in Southern California pursuant to Code § 3072(b)(5)." (Motion,
15 page 3, line 5-8; See footnote⁷ as to the application of this statutory language)

16 47. Roadtrek contends that because the franchise permits the appointment of an additional
17 dealer in the exiting dealer's territory that this does not constitute a modification of the existing
18 franchise. (Motion, page 4, lines 3-7)

19 48. Roadtrek contends that no hearing is necessary on these protests as the franchises
20 themselves set forth what is necessary for the dealer to remain in good standing as well as what is meant
21 by "good cause" and "material breach".

22 49. The franchise terms may provide what Roadtrek states, but it is still necessary to address
23 and determine the factual issues of whether the franchisees have failed to comply with those terms as
24 Roadtrek has alleged and whether Roadtrek has complied with its franchise terms as Roadtrek claims it
25 has.

26 _____
27 ¹⁶ As stated above, the motion to dismiss was filed as a consolidated motion for the Irvine, Colton, and Scotts Valley
28 locations. However, the Scotts Valley location is in operation under a separate franchise created in 2008, two years after the
2006 Irvine and Colton franchises. The provisions in the franchises are not identical.

1 50. The motion states, "The Dealer Agreements clearly and unequivocally give Roadtrek the
2 discretion to appoint additional dealers in [McMahon's] territories if [McMahon's] fails to maintain
3 good standing under the agreement.... Because [McMahon's] is not in good standing under the
4 Agreement, Roadtrek is permitted to use its discretion to appoint new dealers to [McMahon's]
5 territories." And, quoting from a case, "[I]f defendants were given the right to do what they did by the
6 express provisions of the contract there can be no breach." (Motion, page 4, lines 15-22)

7 51. The statement is then made by Roadtrek that, "Put another way, the NMVB would
8 unquestionably have jurisdiction if Roadtrek appointed an additional dealer within the territories of
9 [McMahon's] and [McMahon's] was in good standing." (Motion, page 4, lines 24-27) This sentence
10 clearly states the importance of the need to address at a minimum the disputed factual issue of whether
11 the franchisees are or are not in good standing.

12 52. Protestants do not concede that they are "not in good standing" and do not concede that
13 they are in breach. Therefore, there is a factual dispute that must be resolved.

14 **As to the terms and requirements of the franchise**

15 53. If Protestants are in good standing, then there is no right under the franchise to appoint an
16 additional dealer in the exclusive territories granted by the franchise. Appointing the additional dealer if
17 Protestants are in good standing or if they are not in breach would be doing something that the franchise
18 does not permit Roadtrek to do. The result of doing so would modify the franchise by depriving
19 Protestants of their exclusive territory in derogation of the substantive express terms of the franchise. In
20 addition, there is no showing that Roadtrek either is not required to or is excused from complying with
21 the terms of its own franchise regarding providing 365 days prior written notice if the appointment of
22 the additional dealership was due to a claimed violation of Clause 109 (relating to stocking), which is
23 the only violation mentioned in the motion. (Motion, Page 2, lines 20-25; See Clause 520 and Clause
24 530)

25 54. It is possible that even if Protestants have not met the minimum standards for stocking
26 imposed by Clause 109, that Roadtrek in exercising its rights to "substantially change the material terms
27 of this Agreement (including the Territory)" must comply with Clause 520. Whether the appointment of
28 an additional Roadtrek dealer in the territories granted by the franchise constituted a substantial change

1 in the material terms of this agreement cannot be determined by way of this Consolidated Motion to
2 dismiss the protests.

3 55. What can not be determined from the documents or facts before the Board include:

- 4 ■ Whether Protestants have in fact failed to maintain the minimum inventory required by
5 Clause 109 and are no longer in good standing;
- 6 ■ Whether Protestants have failed to comply with Clause 111 (which primarily relates to
7 minimum purchases by Dealer) and thus may be in material breach pursuant to Clause 520
8 and Clause 530;
- 9 ■ If there is a violation of the minimum inventory requirement of Clause 109, whether
10 Roadtrek must provide Protestants 365 days' written notice of that claim so as to satisfy
11 Clause 520. (There is no express language relating to providing notice that a dealer is no
12 longer in good standing. Certainly some sort of notice must be provided if Roadtrek is going
13 to change the Dealer's status from "exclusive" to non-exclusive. As Clause 520 expressly
14 applies to a Dealer's failure to comply with Clause 109, it would be reasonable to interpret
15 the franchise language pertaining to the providing of notice for a breach of Clause 109 to be
16 that notice as stated in Clause 520;
- 17 ■ If the 365 days' written notice was required to be given, whether it was in fact "provided" by
18 Roadtrek as required.

19 56. Even if the modification would be permitted upon the occurrence or non-occurrence of a
20 stated event solely because the franchise so states (as Roadtrek contends), in the absence of facts
21 establishing that event, there would be no right to do what the franchisor seeks to do. Attempting to
22 modify the franchise under such circumstances would not be doing merely what the franchise permits
23 the franchisor to do.

24 **As to the requirements of the Vehicle Code**

25 57. Section 3070(b) states that "Notwithstanding... the terms of any franchise..." Therefore,
26 the fact that the franchisor may have included language in the franchise to permit modifications for a
27 specific reason does not mean that the franchisor may enforce that language and unilaterally modify the
28 franchise merely upon the franchisor's assertion that the franchise language permits the conduct

1 intended.

2 58. Roadtrek is asserting that there is no modification as Roadtrek is doing only what the
3 franchises permit therefore there is no jurisdiction in the Board to hear the protests. However, the Board
4 should have the power to determine whether it has jurisdiction rather than merely accept the factual
5 assertions and legal conclusions of the franchisor that it is merely doing what the franchise permits. To
6 conclude otherwise would be to permit franchisors to avoid the application of Section 3070 merely by
7 the language in their franchises and then in their pleadings.

8 59. It appears fundamental that the franchisees here should be permitted at the least to have a
9 hearing before the Board on whether there has been or will be a modification of the franchises. If there
10 is no modification established by the franchisee, then Roadtrek would be correct, the Board would have
11 no jurisdiction, and the protests should be dismissed. However, as Roadtrek has stated, "... the NMVB
12 would unquestionably have jurisdiction if Roadtrek appointed an additional dealer within the territories
13 of [McMahon's] and [McMahon's] was in good standing." (Motion, page 4, lines 23-27)

14 60. Therefore, as is the usual practice of the Board under these circumstances when a
15 "modification protest" has been filed:

16 a. The Protestant would have the burden of going forward and the burden of proof that there
17 was or was going to be a modification of the franchise;

18 b. If no modification is established, the protest should be dismissed.

19 c. If a modification is established, the Protestant would then have the burden of going
20 forward and burden of proof that the modification would substantially affect the franchisee's sales or
21 service obligations or investment. If this is not established, the protest should be dismissed.

22 d. If Protestant meets these burdens, the burden would then be upon the franchisor (as
23 required by the Vehicle Code) to prove good cause for the modification.

24 61. The statements in this order should not be taken as indicating that any time a franchisor
25 "does only what the franchise permits" that there would be no modification and thus preclude the
26 application of Section 3070(b). To reach this conclusion would be to ignore the initial language of
27 Section 3070(b) of "Notwithstanding...the terms of any franchise ..." To conclude that the exercise of a
28 right granted by the language of the franchise is not a modification of the franchise merely because it is

1 permitted by the franchise language is to disregard the statutory language.

2 **CONCLUSION AS TO THE MOTION TO DISMISS THE PROTESTS OF**
3 **MCMAHON'S IRVINE AND MCMAHON'S COLTON**

4 62. Respondent's Consolidated Motion to dismiss the protests of McMahon's Irvine and
5 McMahon's Colton is denied. Protest No. PR-2199-10 and PR-2201-10 shall proceed with a hearing as
6 indicated above. The Board staff will expeditiously set a telephonic Pre-Hearing Conference.

7 **DISCUSSION OF THE MOTION TO DISMISS THE**
8 **PROTEST OF MCMAHON'S SCOTTS VALLEY**

9 **THE FRANCHISE OF MCMAHON'S SCOTTS VALLEY**

10 63. The franchise (attached as Exhibit 2) for McMahon's Scotts Valley identifies the parties
11 as "ROADTREK MOTORHOMES,"¹⁷ a division of HANMAR MOTOR CORPORATION.... (herein
12 after called "Roadtrek")"¹⁸ and "MEGA RV CORPORATION, doing business as MCMAHON'S RV,
13 having its head office at 1312 RV Center Dr (sic), #16, Colton, CA, USA, 92324, doing business at 5060
14 Scotts Valley Drive, Scotts Valley, CA..."

15 64. This franchise was signed in behalf of "MEGA RV CORPORATION" by Brent
16 McMahon, President, on January 31, 2008 and in behalf of "ROADTREK MOTORHOMES" by Paul
17 Cassidy, Vice President of Sales, on February 8, 2008 (two years after the franchise between Home &
18 Park Motorhomes and McMahon's Colton and McMahon's Irvine).

19 65. Some of the relevant language of this franchise for McMahon's Scotts Valley is the same
20 as the language in the earlier franchise for McMahon's Colton and McMahon's Irvine but there are some
21 differences. The franchise for McMahon's Colton and McMahon's Irvine will be referred to as "the
22 2006 franchise" as compared to the "Scotts Valley franchise" of 2008. Some of the similarities and
23 differences are as follows.

24 66. Clause 107 Selling Agreement is identical in both franchises. It grants "Dealer... the

25 _____
26 ¹⁷ The franchise for the Colton and Irvine locations identified the franchisor as "HOME & PARK MOTORHOMES".

27 ¹⁸ Although the franchise says that Roadtrek Motorhomes will be referred to in the document as "Roadtrek", most of the
28 references in the remainder of the document refer to "RMI". "RMI" is not identified in the document but is assumed to be
"Roadtrek Motorhomes, Inc." For consistency, the franchisor will be referred to herein as "Roadtrek" unless quoting from
the documents, in which case it may be "RMI".

1 exclusive right to purchase, display and resell Roadtreks ... in the Territory as mutually agreed to by
2 Dealer and Roadtrek..."

3 67. Clause "108 Dealer Territory (Primary Area of Market Responsibility)" is different. The
4 Scotts Valley franchise identifies the "Territory" as "a 50 mile radius of Scotts Valley, CA, so long as
5 Dealer remains in good standing during the terms of this agreement, Roadtrek will not locate another
6 dealer within Dealer's territory. Good Standing (sic) includes hitting minimum sales targets." The 2006
7 franchise provides for a territory of 60 miles from Colton, Irvine, and Stanton (compared to 50 miles for
8 the Scotts Valley franchise). The 2006 franchise did not have the last sentence stating that "Good
9 Standing (sic) includes hitting minimum sales targets." The only express requirement for good standing
10 in the 2006 franchise was in its Clause 109 relating to maintaining minimum inventory levels.

11 68. Clause "109 Sales Minimums" is new compared to the 2006 franchise. This clause in the
12 Scotts Valley franchise states as follows:

13 Dealer hereby agrees to achieve an annual minimum of 60¹⁹ retail sales of Roadtrek Units
14 for the market area.

15 The sales minimums set forth in the Dealer Agreement, as amended from time to time, and
16 minimum stocking shall be reviewed and amended annually by RMI and Dealer. RMI
17 shall have the right to increase or decrease such sales minimums by amounts consistent
18 with RMI's national or state market penetration as determined by RMI in its discretion.
19 Failure by Dealer to achieve its assigned sales minimums shall be grounds for termination
20 of the Dealer Agreement by RMI. RMI may make reasonable adjustments to sales
21 minimums in the event of unusual economic conditions affecting the Dealer's Market Area.

19 69. None of this language is in the 2006 franchise for McMahon's Colton or McMahon's
20 Irvine, and there were no "sales minimums" stated elsewhere in the documents provided to the Board
21 that related to the McMahon's Colton or McMahon's Irvine franchises.

22 70. Clause "110 Basic Minimum Inventory" is similar to Clause 109 in the 2006 franchise
23 and states:

24 Dealer acknowledges that to remain in good standing under this Agreement, subject to
25 product availability, new Roadtreks must be stocked and prominently displayed on all
26 authorized lots in the Dealer's Territory. Dealer's basic minimum inventory of Models on
hand or on order for prompt delivery is set forth below: ...

27 ¹⁹ The franchise document was submitted to the Board by Roadtrek. As printed it stated what appears to be an "annual
28 minimum number of 75 retail sales". The document has the printed number "75" stricken by a pen with a new number of
"60" written above the printed "75". The change has no initials near it.

1 (The document then states that the numbers “ON HAND OR ON ORDER” shall be 5 of the Model 210,
2 4 of the Model 190, 2 of the Model 170, 6 of the RS-Adventurous, and 3 of the SS-Agile. This makes a
3 total of 20 units required as “Basic Minimum Inventory”.)

- 4 a. The basic minimum inventory on hand and on order will be reviewed annually by
5 RMI and Dealer. Dealer agrees to any reasonable changes which RMI makes in good
6 faith to any inventory levels. Failure by Dealer to maintain such prescribed basic
7 minimum inventory shall be grounds for termination of the Dealer Agreement by RMI;
8 provided, however, that no default shall be deemed to exist if Dealer orders replacements
9 for Products sold from inventory within ten (10) days after such sale.
10 b. ...

11 71. As can be seen, Clause 110 states the requirement for remaining “in good standing” for
12 purposes of retaining Dealer’s exclusive territory under Clause 108 (as did the 2006 franchise in its
13 Clause 109). What is added in this new language is that failure to comply with the provisions of Clause
14 110 relating to stocking inventory “shall be ground[s] for termination...” The 2006 franchise for
15 McMahon’s Colton and McMahon’s Irvine provided for the same possibility of termination for violation
16 of its Clause 109, except that this was stated in Clauses 520 and 530 of those franchises, clauses which
17 do not provide for avoiding “default” if replacements are ordered within ten days after the Products are
18 sold from inventory.

19 72. Clause “111 Other Manufacturers’ Products” reads in its entirety: “Dealer may only
20 stock Pleasureway class B motorhomes, and agrees not to stock any other class B motorhomes by any
21 other manufacturer.” This compares to Clause 110 of the 2006 franchise which stated: “Dealer may
22 stock class B motorhomes by other manufacturers.”

23 73. Although neither Clause 110 in the 2006 franchise (permitting dualing) or Clause 111 of
24 the 2008 franchise (prohibiting dualing) is at issue, the comparison of these two clauses is useful in
25 considering Roadtrek’s claim that what it seeks to do here is not a modification because the franchise
26 language permits Roadtrek to change Dealer’s Territory from an exclusive territory to one that contained
27 an additional dealer.

28 74. In other words, these “dualing” versus “no-dualing” clauses could be useful in
considering whether a franchisor could avoid the application of Section 3070(b) merely by placing
express language in all of its clauses giving it the right to change those provisions.

1 75. Here, Roadtrek in its 2006 franchise expressly permits dualing with other Class B
2 motorhome manufacturers but in its 2008 franchise expressly prohibits dualing with any Class B
3 motorhome manufacturer except one. As the 2006 franchises are written, any attempt by Roadtrek to
4 modify the 2006 franchises of McMahon's to prohibit dualing could be subject to a protest as a
5 modification. However, could Roadtrek eliminate a possible "modification protest" by inserting
6 language such as, "Unless Roadtrek decides otherwise, Dealer may stock Class B motorhomes of other
7 manufacturers." After entering this franchise, Dealer built a facility large enough to accommodate
8 Roadtrek products as well as the products of three or four other manufacturers from which Dealer
9 obtained franchises. Could Roadtrek subsequently notify Dealer that this clause is changed to "Dealer
10 may not stock Class B motorhomes of other manufacturers" and successfully claim that this is not a
11 modification of the franchise because Roadtrek, by its franchise terms, was given the right to prevent
12 dualing at some time in future? Or, is this the type of situation that was intended by the legislature to be
13 within Section 3070(b) (see Paragraph 16).

14 76. It is noted that this legislatively-imposed limitation upon the contractual right of a
15 franchisor to unilaterally modify the Dealer's contract is not a total ban on the exercise of what may be
16 called a "cram down" right. The franchisor may still cram down a unilateral modification of the
17 franchise, but only if doing so does not substantially affect the dealer's sales and service obligations or
18 investment, and even if it does do so, the unilateral modification will nonetheless be permitted if the
19 franchisor can establish good cause for the intended modification.

20 77. Recognizing the Board's jurisdiction to prevent a franchisor from exercising a right
21 contained in the contract terms, as drafted usually by the franchisor, should be no different whether the
22 intended action is an express right to modify the contract or an express right to terminate the contract.
23 "Notwithstanding ... the terms ..." a franchisor may exercise either its express right to terminate or
24 express right to modify the franchise only if done in compliance with the statutory limitations.

25 78. Here there is no dispute that the Board would have jurisdiction if there was a
26 modification that substantially affects the franchisee's sales or service obligations or investments.
27 However, Roadtrek contends that there is no modification as it is merely doing what the franchise
28 permits it to do.

1 79. It is for this very reason that the legislature has determined that there is a need to impose
2 some limits upon the rights of a franchisor to do what the franchise permits the franchisor to do whether
3 the intent is to terminate a franchise (Section 3070(a)) or modify a franchise (Section 3070(b)). In both
4 these situations the statutes begin with the language, "Notwithstanding ... the terms of any franchise..."

5 80. Accepting Roadtrek's contention here would mean that if the franchisor may avoid the
6 application of Section 3070(b) by an express term in the franchise permitting the intended conduct
7 notwithstanding Section 3070(b), then a franchisor should also be able to avoid the application of
8 Section 3070(a) and terminate a franchise if the express terms of the franchise permit the termination.
9 Reaching these results would mean that both Sections 3070(a) and (b) would be rendered meaningless.
10 Any franchise term that gives a franchisor the right to terminate or modify a franchise for a stated reason
11 could be terminated or modified without a right to protest if that reason was found to exist (or as claimed
12 here, if the franchisor merely alleged that reason existed). The language of the franchise would then be
13 trumping the language of the statute when the clear legislative intent was to have the statute's language
14 trump the franchise language. The exercise of an express right to terminate is subject to legislatively
15 created limitations. Likewise the exercise of an express right to modify a franchise term is also subject
16 to legislatively-created limitations. Whether a franchisor is seeking to terminate a franchise in
17 accordance with an express right to do so or is modifying a franchise in accordance with an express right
18 to do so, the language of Section 3070(a) and (b) is applicable - "Notwithstanding ... the terms of any
19 franchise, a franchisor ... may not"

20 **AS TO WHETHER ROADTREK IS MERELY COMPLYING WITH THE TERMS OF ITS FRANCHISE**

21 81. As with the 2006 franchise, the 2008 franchise in Clause "520 Roadtrek Termination"
22 states: "Roadtrek shall not ... substantially change the material terms of this Agreement (including the
23 Territory) without good cause."

24 82. Clause 520 also states: "Except in instances of the insolvency or bankruptcy of Dealer,
25 or assignment for the benefit of creditors by Dealer, or failure to meet sales commitments in section 111
26 (sic), Roadtrek shall provide Dealer at least 180 days prior written notice of ...substantial change in the
27 material terms of this Agreement. The notice shall state all the reasons for such good cause action."

28 83. The reference in the Scotts Valley franchise in Clause 520 to "sales commitments in

1 section 111” tracks the language in the 2006 franchise. However, there are two problems with this
 2 language. As for the 2006 franchise (Colton and Irvine), there were no sales commitments contained in
 3 “section 111”. And, as for the 2008 franchise for Scotts Valley, “section 111” has nothing to do with
 4 “sales commitments”. “Section 111” of this 2008 franchise is the clause discussed above titled “Other
 5 Manufacturers’ Products” which precludes any dualing by Scotts Valley with any other class B
 6 motorhomes except Pleasureway.

7 84. Another change is that the time to provide Dealer with “prior written notice of
 8 termination ... or substantial change in the material terms of this Agreement” has been reduced from at
 9 least 365 days (one year) in the 2006 franchise to at least 180 days (six months) in this 2008 franchise.

10 85. Clause “530 Good Cause” states what is included as “good cause” needed for Clause 520
 11 actions (including substantial change in any material terms including Dealer’s Territory). Good cause,
 12 among other things, includes under “2. Any material breach of this Agreement including but not limited
 13 to clauses 109, 111, 112, 120, 140, 172, 187, 189, 190, 191, 192, 210, 301, 320, 330, 360, 375, and
 14 600”. Despite the fact that there have been changes in the 2008 franchise as to the subjects of these
 15 sections, these clause numbers track exactly the clause numbers in the 2006 franchise.

16 86. A comparison of the first three numbers with the subjects of the clauses in the two sets of
 17 franchises indicates the following:

18	19	20	21	22	23
CLAUSE NO.	2006 FRANCHISE FOR COLTON AND IRVINE	2008 FRANCHISE FOR SCOTTS VALLEY			
109	Basic Minimum <u>Inventory</u> stocking of 22	<u>Sales</u> Minimums - set at 60 per year			
111	Dealer Commitment - Lists only minimum <u>purchases</u> of 25 quarter/100 per year not sales	No Dualing - (in Clause 110 of 2006 franchise)			
112	Dealer Effectiveness - Sales, service, parts, facilities, etc. no numbers set	Dealer Commitment - Requires minimum purchase of 75 new and demos per year (similar to Clause 111 in 2006 franchise)			

24 87. Of these enumerated clauses, it appears that Roadtrek is claiming in its motion that all
 25 three of the McMahon dealerships are no longer in good standing, citing “§109” of the Dealer
 26 Agreements for all three of the locations. Roadtrek asserts: “The sales territory set forth in each Dealer
 27 Agreement applies only if the ‘Dealer remains in good standing during the terms of [the] agreement.’
 28 Good standing includes stocking a minimum level of Roadtreks (Dealer Agreements §109, Ex. 1 and 2.”

1 [Exhibit 1 and 2 are the franchises]. (Motion, page 2, lines 20-25) Roadtrek in its Reply Brief also cites
2 Clauses 108 and 109 for Irvine and Colton, (Reply, page 2-3) and Clauses 108 and 109 for Scotts Valley
3 (Reply, page 3).

4 88. For Irvine and Colton, Clause 109 refers to the failure to maintain minimum stocking
5 levels, whereas Clause 109 for Scotts Valley refers to the failure to achieve minimum retail sales, not
6 minimum stocking as quoted above. Minimum stocking requirements for Scotts Valley is in its Clause
7 110. Clause 110 is not listed in Clause 530 for Scotts Valley or Colton or Irvine as one of those
8 described as a material breach.

9 89. However, regardless of the reason for any attempt to appoint an additional dealer in the
10 Territory assigned to Scotts Valley, there is a requirement in the Scotts Valley franchise, as there is also
11 for Irvine and Colton, that "Roadtrek shall not ... substantially change the material terms of this
12 Agreement (including the Territory) without good cause", and that under most circumstances, including
13 the failure to meet minimum stocking requirements, Roadtrek shall provide Scotts Valley with at least
14 180 days prior written notice of "substantial change in the material terms of this Agreement (including
15 the Territory)" and stating all the reasons for such action.

16 90. The readings of the various provisions of the Scotts Valley franchise could lead to the
17 following conclusions:

18 a. Roadtrek has granted Scotts Valley an exclusive territory described as being that area
19 within a 50 mile radius of Scotts Valley.

20 b. This area may be changed by the appointment of an additional dealer in that Territory if
21 Scotts Valley fails to remain in good standing.

22 c. Good standing requires that Scotts Valley meet both the minimum inventory
23 requirements (Clause 110) and minimum sales targets (Clause 109) which are treated separately in the
24 franchise for Scotts Valley.

25 d. The franchise expressly states that Roadtrek shall not substantially change the material
26 terms of this Agreement (including the Territory) without good cause.

27 e. The franchise originally gave Scotts Valley the status of being the exclusive Roadtrek
28 dealer in the Territory with the right to remain so unless Scotts Valley ceased being in good standing.

1 f. A violation of Clause 109 (minimum sales requirements for Scotts Valley) is also
2 described as a “material breach” and constitutes “good cause” (under Clause 530) for Roadtrek to
3 “substantial[ly] change ... the material terms of this Agreement” including the Territory, under Clause
4 520. However, in order to do so, Roadtrek has established by its franchise that it shall “provide Dealer
5 at least 180 days prior written notice” of its intent to do so.²⁰

6 91. There are no provisions expressly relating to what notice must be given to Dealer if
7 Roadtrek is going to claim a loss of “good standing” under Clauses 108, 109 and 110 of the Scotts
8 Valley franchise, followed by a change in the territory from “exclusive” to “non-exclusive”. As the
9 franchise terms that Roadtrek claims have been violated are the same for both loss of good standing and
10 material breach, and as the conduct or lack thereof by Dealer is the same, with the possible consequence
11 here being the same (loss of the right to be the exclusive Roadtrek dealer in the assigned Territory), it is
12 reasonable to find that Roadtrek is obligated to comply with the same notice requirements pertaining to
13 the alleged breach of those terms. The only “notice” requirements for “any material breach” “including
14 but not limited to” Clause 109 are those in Clause 520.

15 92. It is difficult to conclude that Roadtrek would have the right to declare unilaterally that
16 there is a violation of Clauses 108 and 109, meaning that Dealer is no longer in good standing, and that
17 these same violations, expressly stated to constitute a “material breach” under Clause 520, could be
18 treated differently as to the requirement of providing notice to the Dealer especially as the action
19 Roadtrek seeks to take is the same, changing the dealer’s Territory (indicated to be a “material term”)
20 from exclusive to non-exclusive.

21 93. There cannot be and is not any determination being made now that changing the status of
22 the Territory from being exclusively assigned to McMahon’s Scotts Valley would constitute a
23 “substantial change in the material terms” of the franchise.

24 94. There is no information before the Board as to whether Roadtrek has provided 180 days
25 prior written notice that it intends to change the territory assigned to Scotts Valley from “exclusive” to
26

27 ²⁰ It is noted that the requirement of providing 180 days prior written notice does not apply if the claim of Roadtrek is
28 the “failure to meet sales commitments in Section 111” of the Scotts Valley franchise, but Clause 111 is the no-
dualing clause in the 2008 franchise, not the sales commitment clause.

1 shared with another Roadtrek dealer now or at some time in the future.

2 95. As of the time of hearing on this motion, Roadtrek represented that it had not appointed
3 "Mike Thompson's dealership within 50 miles of the Scotts Valley location." (Reply Page 4, lines 18-
4 21) This statement is very narrow as it relates only to "Mike Thompson", but, if this is the case and if
5 no other dealer has been appointed in that territory and if there is no intention of Roadtrek to appoint a
6 dealer in that territory then this protest is premature and the recommendation to the Board will be that
7 the Protest be dismissed without prejudice.

8 96. However, if Roadtrek does intend to appoint another dealer thereby converting the
9 territory assigned to McMahan's Scotts Valley from exclusive to shared, then the Protest should proceed
10 to hearing with the same procedure as stated above in regard to the Protests of McMahan's Irvine and
11 McMahan's Colton.

12 97. It is understood that Roadtrek's position is that McMahan's Scotts Valley is not in good
13 standing under the terms of its franchise; that as a consequence of this, Roadtrek is permitted to appoint
14 an additional dealer in the Territory that the franchise stated was the exclusive territory of McMahan's
15 Scotts Valley; and that because this right is granted by the franchise, such an appointment would not be
16 a modification of the franchise. Roadtrek thus contends that, as a result of the above, Roadtrek is not
17 required by its franchise or by the Vehicle Code to give notice of its intent to establish an additional
18 dealer in what the franchise stated was the exclusive territory of McMahan's Scotts Valley.

19 98. If Roadtrek is correct in all of the above assertions, and most important correct in its
20 conclusion that the franchise is not being modified, then the Board would have no jurisdiction and the
21 protest of McMahan's Scotts Valley should be dismissed. However, there are questions of fact and
22 questions of contract interpretation that must be decided and which cannot be decided at this time in the
23 consideration of the Motion to Dismiss.

24 99. If Roadtrek is not correct and McMahan's Scotts Valley is in good standing as defined in
25 the franchise, then McMahan's Scotts Valley will be contractually entitled to retain "the exclusive right
26 to purchase, display and resell Roadtreks, parts and accessories in the Territory... including lease & fleet
27 sales..." (See Clause 107).

28 100. And, even if Roadtrek is correct that what it intends to do is nothing more than what is

1 permitted by the franchise, a permissive unilateral change in the Territory from exclusive to non-
2 exclusive, then McMahon's Scotts Valley should have the right to establish that this is a modification
3 which comes within the language of Section 3070(b).

4 101. As was stated in the discussion pertaining to McMahon's Colton and McMahon's Irvine,
5 in regard to the terms of the franchise alone, there is a need to determine if:

6 (a) McMahon's Scotts Valley is no longer in good standing;

7 (b) "The Territory" granted in the franchise is a "material term";

8 (c) The appointment of the additional dealer in "the Territory" will constitute a "substantial
9 change" in that "material term";

10 (d) Roadtrek has "good cause" to change "the Territory"; and

11 (e) If there will be "good cause" to permit Roadtrek to make a "substantial change" in a
12 "material term" whether Roadtrek is required to "provide" 180 days notice of its intended change; and
13 if so,

14 (f) Whether Roadtrek has complied with the terms of the franchise.

15 102. And what is most important, is there a need to determine whether Section 3070(b) is
16 applicable "Notwithstanding ... the terms of..." the franchise.

17 103. The other reasons as stated above pertaining to the need for an evidentiary hearing of this
18 protest and the protests of McMahon's Colton and McMahon's Irvine are also incorporated here.

19 **CONCLUSION AS TO THE MOTION TO DISMISS THE PROTEST OF MCMAHON'S SCOTTS VALLEY**

20 104. Unlike the situation with regard to McMahon's Colton and McMahon's Irvine, Roadtrek
21 does not admit that it has or intends to establish an additional dealership in the territory assigned to
22 McMahon's Scotts Valley as has been alleged by Protestant. Roadtrek is directed to inform promptly
23 the Board and McMahon's Scotts Valley as to whether Roadtrek has established or intends to establish
24 within the next 6 months a Roadtrek franchise at any location within the Territory assigned to
25 McMahon's Scotts Valley. This information shall be by affidavit or declaration of an authorized agent
26 of Roadtrek and sent to the Board by e-mail and hard copy no later than 10 days from the date this order
27 is sent to Roadtrek.

28 105. If the information provided indicates no such establishment or intended establishment,

1 the Proposed Order to the Board will be that Respondent's Motion to Dismiss Consolidated Protests
2 with respect to McMahon's Scotts Valley, Protest No. PR-2198-10, be granted and that the protest be
3 dismissed without prejudice.

4 106. If Roadtrek replies that there is or will be an establishment of a Roadtrek franchisee in the
5 Territory described above, then an order will be issued denying Respondent's Consolidated Motion to
6 dismiss the protest of McMahon's Scotts Valley and the protest will proceed with a hearing as described
7 above. The Board staff will expeditiously set a telephonic Pre-Hearing Conference.

8 **THE PROTEST FILED BY MCMAHON'S PALM DESERT – PR-2200-10**

9 107. The protest filed by McMahon's Palm Desert alleges that Roadtrek "is the franchisor of
10 Protestant." (Protest page 1, line 27-28)

11 108. As with the other protests, it alleges that Roadtrek intends to establish an additional
12 Roadtrek dealer within Protestant's exclusive territory and that this will result in a modification of
13 Protestant's franchise....²¹

14 **THE PALM DESERT MOTION**

15 109. Roadtrek's motion to dismiss alleges that the protest should be dismissed as McMahon's
16 Palm Desert is not a franchisee of Roadtrek

17 110. This contention is based upon the claim by Roadtrek that there is no franchise in
18 existence between Roadtrek and McMahon's Palm Desert. If there is no franchise, there can be no
19 modification that would be subject to Section 3070.

20 **THE OPPOSITION FILED BY MCMAHON'S PALM DESERT**

21 111. The Opposition filed by McMahon's Palm Desert alleges that:

22 a. "...such written franchise does exist". (Opposition, page 2, line 10);

23 b. McMahon's Palm Desert "has been unable to locate its copy of the franchise..."
24 (Opposition, page 2, lines 11-12);

25 c. McMahon's Palm Desert "has been a Roadtrek dealer at its Palm desert location since
26 approximately December 2008/January 2009..." (Opposition, page 2, lines 11-13);

27
28 ²¹ Although it is not necessary for the filing of a protest, a copy of the Dealer Agreement was attached to each of the other
three Protests. There was no copy of the Dealer Agreement attached to the McMahon's Palm Desert Protest.

1 d. "Roadtrek has delivered units to this location, which units McMahon's stocked and sold."
2 (Opposition, page 2, line 13-14);

3 e. McMahon's Palm Desert is listed on McMahon's website as a Roadtrek dealership
4 location (Opposition, page 2, lines 20-21);

5 f. "(P)ursuant to V.C. section 11713.22 it is unlawful for a manufacturer 'to fail or refuse to
6 provide a recreational vehicle dealer a written dealer agreement that complies with the requirements of
7 Section 331.'" (Opposition, page 2, lines 17-20)

8 g. "If Roadtrek's argument that no written franchise exists were in fact accurate, it would be
9 in violation of V.C. Section 11713.22 exposing it to money damages, injunctive relief and attorney's
10 fees." (Opposition, page 2, footnote 3)

11 THE STATUTORY REQUIREMENTS FOR THE BOARD TO HAVE JURISDICTION OVER
12 THE PROTEST OF McMAHON'S PALM DESERT

13 112. There is no dispute that for the Board to have jurisdiction over this protest there must be a
14 "franchise" in existence under the terms of which McMahon's Palm Desert would be a "franchisee" and
15 Roadtrek would be a "franchisor". The dispute between the parties is whether there is or is not a
16 "franchise" in existence between them. If there is a franchise, McMahon's Palm Desert is a franchisee
17 and the Palm Desert Motion, which is based solely upon the lack of a franchise, should be denied. If
18 there is no franchise, then McMahon's Palm Desert would not be a franchisee, there would be no
19 franchise being modified, the Board would have no jurisdiction and the protest should be dismissed.

20 113. The Board's enabling statutes include the following:

21 3050. The board shall do all of the following: ...

22 (d) Hear and decide, within the limitations and in accordance with the procedure
23 provided, **a protest presented by a franchisee** pursuant to Section 3060, 3062, 3064,
24 3065, or 3065.1. A member of the board who is a new motor vehicle dealer may not
25 participate in, hear, comment, advise other members upon, or decide, any matter
26 involving a protest filed pursuant to Article 4 (commencing with Section 3060), unless all
27 parties to the protest stipulate otherwise. (Emphasis added.)

28 114. Although the Vehicle Code was amended in 2003 to include Recreational Vehicle
franchises to those subject to the Board's jurisdiction (by adding Sections 3070 through 3079),
conforming amendments were not made to the above Section 3050. The new statutes were effective in

1 2004.

2 115. This protest was filed purportedly pursuant to Section 3070(b)(1), which provides in part
3 as follows:

4 Notwithstanding ... the terms of any franchise, a **franchisor** of a dealer of recreational
5 vehicles may not modify ... **a franchise** ... if the modification or replacement would
6 substantially affect the **franchisee's** sales or service obligations or investment, unless the
7 **franchisor** has first given the board and each affected **franchisee** written notice thereof
8 at least 60 days in advance of the modification or replacement. Within 30 days of receipt
9 of a notice satisfying the requirements of this section, or within 30 days after the end of
any appeal procedure provided by the franchisor, **a franchisee may file a protest** with
the board and the modification or replacement does not become effective until there is a
finding by the board that there is good cause for the modification or replacement.
(Emphasis added.)

10 116. As can be seen, this section applies only to a **franchisor** desiring to modify a **franchise**
11 of a "dealer in recreational vehicles" and permits such a **franchisee** to file a protest.

12 117. The Vehicle Code contains the following definitions:

13 ■ Vehicle Code section 331 defines a "franchise" as follows:

14 (a) A **"franchise" is a written agreement** between two or more persons **having all of**
15 **the following conditions:**

16 (1) A commercial relationship of definite duration or continuing indefinite duration.

17 (2) The franchisee is granted the right to offer for sale or lease, or to sell or lease at
18 retail new motor vehicles... manufactured or distributed by the franchisor or the right to
19 perform authorized warranty repairs and service, or the right to perform any combination
of these activities.

20 (3) The franchisee constitutes a component of the franchisor's distribution system.

21 (4) The operation of the franchisee's business is substantially associated with the
22 franchisor's trademark, trade name, advertising, or other commercial symbol designating
23 the franchisor.

24 (5) The operation of a portion of the franchisee's business is substantially reliant on the
25 franchisor for a continued supply of new vehicles, parts, or accessories.

26 (b) The term "franchise" does not include an agreement entered into by a manufacturer
27 or distributor and a person where all the following apply:

28 (1) The person is authorized to perform warranty repairs and service on vehicles
manufactured or distributed by the manufacturer or distributor.

(2) The person is not a new motor vehicle dealer franchisee of the manufacturer or
distributor.

(3) The person's repair and service facility is not located within the relevant market area
of a new motor vehicle dealer franchisee of the manufacturer or distributor.
(Emphasis added.)

///

///

///

///

1 agreement” between McMahon’s Palm Desert and Roadtrek that would qualify as a franchise. As
2 explained below, even if the factual assertions of McMahon’s Palm Desert were accepted as true, they
3 would not on their own establish the existence of the “written agreement” as needed under these statutes
4 for a franchise.

5 120. The Opposition filed in behalf of McMahon’s Palm Desert contains a Declaration of
6 Brent McMahon. This Declaration states in part that:

7 4. “McMahon’s opened its Palm Desert location in approximately November/December of
8 2008;

9 5. In approximately January 2009, McMahon’s executed a written franchise agreement with
10 ROADTREK MOTORHOMES, INC. ... for McMahon’s Palm Desert location;

11 6. I [Mr. McMahon] executed the written franchise agreement on behalf of McMahon’s in
12 approximately January of 2009 and sent my executed copy to Roadtrek. However, after a diligent
13 search, I and McMahon’s have thus far been unable to locate a copy of the written franchise agreement
14 for McMahon’s Palm Desert location, but such franchise agreement does exist;²²

15 7. Under the franchise agreement, McMahon’s has began to stock and sell Roadtrek
16 recreational vehicles at its Palm Desert location in approximately December 2008/January 2009 with the
17 knowledge and consent of Roadtrek.

18 8. Roadtrek has stopped delivering units to any of McMahon’s dealership locations.”

19 121. What is not stated in the Declaration includes the following:

20 a. Whether (as was the case with the written franchise document for McMahon’s Colton
21 and McMahon’s Irvine) there was a witness who signed the franchise at the time it was signed by Mr.
22 McMahon.

23 b. If there was such a witness who signed the document with Mr. McMahon, who this
24 witness was.

25 c. Whether there was a copy made of the document before it was mailed to Roadtrek and it
26 is this copy that cannot be located;

27
28 ²² There is nothing to indicate that Mr. McMahon is referring to a Dealer Agreement that had been executed by both parties,
which would be necessary for there to be a “written agreement”.

1 d. Whether at the time the document was signed by Mr. McMahon, that it had already been
2 signed by a representative of Roadtrek. (This is the most significant fact that was not asserted in the
3 Declaration.)

4 122. It is noted that the signatures on the franchises for the other three locations were signed
5 and dated to indicate that they had been signed first by Mr. McMahon and subsequently signed as
6 "Accepted" by a representative of Roadtrek. The significance of this is that, even if Mr. McMahon had
7 signed the document as he stated there would have to be a signature of the authorized representative of
8 Roadtrek before there would be a franchise in existence.

9 123. The signatures on the other franchises, as indicated in Paragraphs 25 and 64 above, are as
10 follows:

11 2006 FRANCHISE

12 For McMahon's Colton and McMahon's Irvine - Signed by Mr. McMahan with the date
13 shown as February 21, 2006; witnessed by Richard Biegel.

14 For Roadtrek - Signed by Jim Hammill with the date shown as February 22, 2006;
15 witnessed by Paul Cassidy.

16 2008 FRANCHISE

17 For McMahon's Scotts Valley - Signed by Mr. McMahon with the date shown as January
18 31, 2008; (There is no witness signature.)

19 For Roadtrek - Signed by Paul Cassidy with the date shown as February 8, 2008;
20 witnessed by D. Allen.

21 124. These signatures and dates indicate the following:

22 a. These franchises for the other three dealerships were signed first by Mr. McMahon. At
23 the time he signed them, they did not contain any signature in behalf of Roadtrek. The signing by Mr.
24 McMahon was an "offer" from his companies to Roadtrek. The franchises did not come into existence
25 as "written agreements" until they were signed by an agent of Roadtrek which in each case was
26 subsequent to the signatures of Mr. McMahon.

27 b. As to the claimed franchise of McMahon's Palm Desert - The declaration of Mr.
28 McMahon that he signed the document does not establish that the document had been executed in behalf

1 of Roadtrek. Even if Mr. McMahon did sign the document as he stated, his signature alone would not
2 constitute a “written agreement” and there is nothing before the Board to indicate that the document had
3 been signed by an agent of Roadtrek.

4 c. The Reply Brief of Roadtrek was accompanied by a Declaration of James Hammill, the
5 President and CEO of Roadtrek, who declares that there is no record of a dealer agreement for
6 McMahon’s Palm Desert and that Mr. Hammill has no recollection of signing an agreement in behalf of
7 Roadtrek for a franchise of McMahon’s Palm Desert.

8 d. Without any evidence to establish that an agent of Roadtrek signed the Dealer
9 Agreement, even if signed by McMahon’s Palm Desert, there is no evidence of a franchise with
10 McMahon’s Palm Desert.

11 125. As for the other contentions in the Opposition filed by McMahon’s Palm Desert, these
12 are:

13 a. “...Roadtrek has delivered units to this location, which units McMahon’s stocked and
14 sold.” (Opposition, page 2, line 13-14);

15 Although a contract may be established between the parties based upon their conduct, commonly
16 called an implied-in-fact contract, such a contract does not constitute a statutory “franchise” as defined
17 by the Vehicle Code. Such a contract based upon the conduct of the parties is not a “written agreement”
18 that is required for a “franchise”.

19 b. McMahon’s Palm Desert is listed on McMahon’s website as a Roadtrek dealership
20 location (Opposition, page 2, lines 20-21);

21 What McMahon’s lists on its own website does not satisfy the statutory requirement of a “written
22 agreement” as required in the statutory definition of a franchise.

23 c. “(P)ursuant to V.C. section 11713.22 it is unlawful for a manufacturer ‘to fail or refuse to
24 provide a recreational vehicle dealer a written dealer agreement that complies with the requirements of
25 Section 331 (sic).” (Opposition, page 2, lines 17-20)

26 ///

27 ///

28 ///

1 126. Section 11713.22 in its entirety provides:

2 **(a) Upon mutual agreement of the parties to enter into a recreational vehicle**
3 **franchise, it is unlawful** and a violation of this code for a manufacturer, manufacturer
4 **branch, distributor, or distributor branch licensed under this code to fail or refuse to**
5 **provide a recreational vehicle dealer with a written recreational vehicle franchise**
6 **that complies with the requirements of Section 331.3.**

7 (b) Notwithstanding Section 331.3, a recreational vehicle franchise described in this
8 section shall include, but not be limited to, provisions regarding dealership transfer,
9 dealership termination, sales territory, and reimbursement for costs incurred by the dealer
10 for work related to the manufacturer's warranty for each line-make of recreational vehicle
11 covered by the agreement.

12 (c) This section applies only to a dealer and manufacturer agreement involving
13 recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and
14 Safety Code, but does not include an agreement with a dealer who deals exclusively in
15 truck campers.

16 (Emphasis added.)

17 127. As in the other sections defining a "franchise", this section also requires that there be
18 "mutual agreement of the parties to enter into a recreational vehicle franchise" and reinforces or at least
19 recognizes the importance that this mutual agreement be in writing. The "mutual agreement to enter
20 into" the franchise does not dispense with the need that there be a written agreement for there to be a
21 franchise but in fact recognizes the importance that the agreement be in "written" form as otherwise
22 there would not be a "franchise" as defined in Section 331 or 331.3.

23 128. The statute uses the language a "mutual agreement ... to enter into ..." an RV franchise.
24 There is a difference between an "agreement to enter" into a recreational vehicle franchise, and the
25 actual entry into the franchise relationship itself. This could be interpreted to apply to at least three
26 scenarios. These are: (a) The "agreement to enter" could be just that, the parties agree today to enter
27 into a franchise tomorrow, meaning there would still be no franchise until "tomorrow" and only then if
28 the document is signed by both; (b) It could be that the statute is directed at a situation in which the
29 parties orally agree today to all of the needed terms and consider the "deal done" with the written
30 franchise to be signed by both of them in due course as a formality; or, (c) It could be that the statute is
31 directed at the situation in which both parties do sign the written document but the purported franchisor
32 refuses to provide a copy of the written document to the purported franchisee, or the document that is
33 provided does not comply "with the requirements of Section 331.3".

34 129. If the facts indicate either scenario (a) or (b) exists, even though the purported franchisor
35 may be found to be in violation of the statute, there would be no franchise. Under these circumstances,

1 finding a violation of Section 11713.22 does not result in the finding of a franchise and in fact would
2 result in a finding that there is no franchise as there was no written agreement. In essence, a party
3 claiming to be a franchisee would be in a Catch-22 situation if that party also claims that the facts are
4 those described in (a) or (b) above, as such a party would be at the same time claiming that the statute
5 was violated because there is no written agreement (meaning the party is admitting the lack of the
6 writing needed for there to be a franchise).

7 130. It is possible that Section 11713.22 was intended to apply to situation (c) above, where
8 the parties have reached a mutual agreement, the franchise document has been signed by both, but either
9 no copy has been provided to the franchisee or the franchise document does not comply with Section
10 331.3 as mandated. But, as with situation (a) and (b), the violation of Section 11713.22 does not
11 establish the existence of the “franchise” that is required to exist for McMahon’s Palm Desert to be a
12 franchisee. Section 11713.22 makes it unlawful for the manufacturer “... to fail or refuse to provide a
13 recreational vehicle dealer with a written recreational vehicle franchise...” but, before such a finding can
14 be made, the Section initially requires that there be “... mutual agreement of the parties to enter into a
15 recreational vehicle franchise...” And, even if there is such mutual agreement, and even if Section
16 11713.22 is violated, until the agreement is in written form, there is no “franchise” as defined by the
17 Vehicle Code.

18 131. The facts as alleged by McMahon’s Palm Desert could support the findings that there was
19 a “mutual agreement of the parties to enter into a recreational vehicle franchise” as established by the
20 alleged conduct of the parties and therefore it is possible that Section 11713.22 was violated.
21 However, the facts as alleged by McMahon’s Palm Desert do not support that critical first element
22 which must be shown for McMahon’s Palm Desert to be a franchisee, that there be a “written”

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 agreement.²³ McMahon's Palm Desert may establish what is termed an "implied-in-fact" agreement
2 based upon the conduct of the parties but such an agreement will not operate as a statutory "franchise"
3 as it is not written.

4 132. An additional contention in McMahon's Palm Desert opposition is: "If Roadtrek's
5 argument that no written franchise exists were in fact accurate, it would be in violation of V.C. Section
6 11713.22 exposing it to money damages, injunctive relief and attorney's fees." (Opposition, page 2,
7 footnote 3)

8 133. As stated above, if scenario (a) or (b) applied, the fact that McMahon's Palm Desert may
9 establish it is entitled to the relief mentioned, does not make it a franchisee under the statutory definition
10 of a franchise as there would be no written agreement. And, if scenario (c) applied, the franchise would
11 exist because it is in writing not because Section 11713.22 may have been violated.

12 CONCLUSION AS TO THE MOTION TO DISMISS THE PROTEST OF MCMAHON'S PALM DESERT

13 134. It is recommended that the motion of Roadtrek to dismiss the protest of
14 McMahon's Palm Desert be granted and that the protest be dismissed without prejudice. If
15 McMahon's Palm Desert can establish there is a "franchise" in existence, the protest may be re-

16 _____
17 ²³ There are other provisions of the Vehicle Code that focus upon the importance of a "written franchise" that has been
18 "signed by both parties" including Section 11713.23 which provides as follows:

19 (a) A recreational vehicle manufacturer, manufacturer branch, distributor, or distributor branch licensed under
20 this code shall not sell a new recreational vehicle in this state to or through a recreational vehicle dealer
21 without having first entered into a written recreational vehicle franchise with that recreational vehicle
22 dealer, that complies with the requirements of Section 331.3 and that has been signed by both parties.

23 (b) A recreational vehicle dealer shall not sell a new recreational vehicle in this state without having first
24 entered into a written recreational vehicle franchise, that complies with the requirements of Section 331.3,
25 with a recreational vehicle manufacturer, manufacturer branch, distributor, or distributor branch licensed under
26 this code, that has been signed by both parties.

27 (c) (1) A recreational vehicle manufacturer, manufacturer branch, distributor, or distributor branch shall not
28 ship a new recreational vehicle to a recreational dealer on or after January 1, 2009, without a recreational
vehicle franchise that has been signed by both parties.

(2) A recreational vehicle dealer shall not receive a new recreational vehicle from a recreational vehicle
manufacturer, manufacturer branch, distributor, or distributor branch on or after January 1, 2009, without a
recreational vehicle franchise that has been signed by both parties.

(d) Any new recreational vehicle inventory that has been purchased by a recreational vehicle dealer, or shipped
by a manufacturer, manufacturer branch, distributor, or distributor branch, before January 1, 2009, may be sold at
any time without a recreational vehicle franchise.

(e) This section applies only to a dealer and manufacturer agreement involving recreational vehicles, as defined
in subdivision (a) of Section 18010 of the Health and Safety Code, but does not include an agreement with a
dealer who deals exclusively in truck campers.

(Emphasis added).

1 filed if the facts so warrant.

2 **PROPOSED ORDER CONCERNING MCMAHON'S SCOTTS VALLEY**

3 135. Roadtrek is directed to inform promptly the Board and McMahon's Scotts Valley as to
4 whether Roadtrek has or has not established or intends to establish a Roadtrek franchisee at any location
5 within the Territory assigned to McMahon's Scotts Valley. This information shall be by affidavit or
6 declaration of an authorized agent of Roadtrek and sent to the Board by e-mail and hard copy no later
7 than 10 days from the date this order is sent to Roadtrek.

8 136. If the information provided indicates no such establishment or intended establishment,
9 the Proposed Order to the Board will be that Respondent's Motion to Dismiss Consolidated Protests be
10 granted with respect to *Mega RV Corp dba McMahon's RV v. Roadtrek Motorhomes, Inc.*, Protest No.
11 PR-2198-10 (Scotts Valley), and that the protest be dismissed without prejudice.

12 137. If Roadtrek replies that there has been or will be an establishment of a Roadtrek
13 franchisee in the Territory described herein for McMahon's Scotts Valley, then an order will be issued
14 denying Respondent's Motion to Dismiss Consolidated Protests with respect to *Mega RV Corp dba*
15 *McMahon's RV v. Roadtrek Motorhomes, Inc.*, Protest No. PR-2198-10 (Scotts Valley) and the protest
16 shall proceed to hearing as indicated above. The Board staff will expeditiously set a telephonic Pre-
17 Hearing Conference.

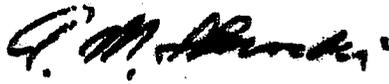
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 PROPOSED ORDER CONCERNING MCMAHON'S PALM DESERT

2 137. After consideration of the pleadings, exhibits, and oral arguments of counsel, it is hereby
3 ordered that Respondent's Motion to Dismiss Protest is granted with respect to *Mega RV Corp dba*
4 *McMahon's RV v. Roadtrek Motorhomes, Inc.*, Protest No. PR-2200-10 (Palm Desert), and the protest is
5 dismissed without prejudice. If McMahon's Palm Desert can establish there is a written agreement
6 constituting a "franchise" in existence, the protest may be re-filed.

7
8
9 I hereby submit the foregoing which
10 constitutes my proposed order in the above-
11 entitled matter, as the result of a hearing
12 before me, and I recommend this proposed
13 order be adopted as the decision of the New
14 Motor Vehicle Board.

15 DATED: April 19, 2010

16 
17 By: _____
18 ANTHONY M. SKROCKI
19 Administrative Law Judge
20
21
22
23
24
25
26

27 George Valverde, Director, DMV
28 Mary Garcia, Branch Chief,
Occupational Licensing, DMV

HOME & PARK MOTORHOMES ROADTREK DEALER AGREEMENT (CDN./U.S.)**THIS AGREEMENT MADE BETWEEN:**

HOME & PARK MOTORHOMES, a division of HANMAR MOTOR CORPORATION, a company incorporated under the laws of the Province of Ontario, having its head office at 100 Shirley Avenue, Kitchener, Ontario, Canada, N2B 2E1 (herein after called "Home & Park").

-and-

MEGA RV CORPORATION, doing business as MCMAHON'S RV, having its head office at 1312 RV Center Dr #16, Colton, CA, USA, 92324 and doing business at 1312 RV Center Dr #16, Colton, CA, 92324 and at 6441 Burt Road #10, Irvine, CA, 92618 (herein after called "Dealer").

WHEREAS Home & Park is engaged in the business of manufacturing and selling Roadtrek class 'B' motorhomes (herein after called "Roadtreks") in Canada, United States and other places.

AND WHEREAS Home & Park is willing to sell Roadtreks to Dealer for resale.

AND WHEREAS Dealer desires to purchase such Roadtreks for resale.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, it is agreed by and between the parties hereto as follows:

100 Sales to Dealers**107 Selling Agreement**

Dealer shall have the exclusive right to purchase, display and resell Roadtreks, parts and accessories in the Territory as mutually agreed to by Dealer and Home & Park, including lease & fleet sales, but excluding factory sales to rental companies and at national and state/provincial shows. This agreement shall remain in full force and effect for a period of three (3) years unless it is terminated for cause as indicated in clause 375 or it is terminated as indicated in clauses 111, 501, and 520.

108 Dealer Territory (Primary Area of Market Responsibility)

Dealer territory shall be limited to an area within 60 mile radii of Irvine, California, Colton, California and Stanton, California. So long as Dealer remains in good standing during the terms of this Agreement, Home & Park will not locate another dealer within Dealer's territory.

109 Dealer Stocking of Roadtreks

Dealer acknowledges that to remain in good standing under this Agreement, subject to product availability, new Roadtreks must be stocked and prominently displayed at each of Dealer's sales outlets within Dealer's territory according to the following schedule:

Six(6)	170 Model
Six(6)	190 Model
Four (4)	210 Model
Six(6)	RS Model

If Home & Park replaces any of the above models, the new model(s) shall replace the replaced model(s) in these requirements. If Home & Park discontinues any of the above models without replacement models, they shall be deleted from these requirements. If Home & Park introduces any new models that do not replace any of the above models, Dealer shall stock at least one of each of these new models at each location within Dealer's territory.

If a particular model specified above is not available from Home & Park within fifteen (15) days of the Dealer's retail delivery of the previous Roadtrek of that model, Dealer will stock another model as a substitute.

Notwithstanding unusual circumstances, upon each renewal of this agreement, Dealer's stocking requirements will be adjusted based on inventory turns of 4 to 5 on the average of Dealer's previous two years of retail sales of new and demonstrator Roadtreks.

110 Other Manufacturers' Products

Dealer may stock class B motorhomes by other manufacturers.

111 Dealer Commitment

Dealer agrees to purchase for retail sale a minimum of one hundred (100) new and demonstrator Roadtreks per calendar year. Dealer will be considered in breach of this agreement in the event that Dealer does not purchase and take delivery of 25 Roadtreks by March 31st, 50 by June 30th, 75 by September 30th and 100 by December 31st of each year.

Dealer will not enter any agreement with any other class B manufacturer that will impact the ability of Dealer to meet or exceed the terms of this agreement.

Additionally, Home & Park will work with Dealer to expand his operation effectively, subject to our normal conditions, as long as that expansion does not encroach on other dealers' territories. Such expansions may require changes to stocking levels for each location and also to minimum sales commitments. These expansions will be negotiated at the time of the expansion. If Dealer expands his operation to new locations, Roadtrek will be the number one selling class B motorhome at those locations.

Additionally, Home & Park will ensure that Dealer receives first priority on new product in the State of California.

112 Dealer Effectiveness

Dealer's effectiveness will be reviewed annually on the basis of Dealer's retail sales and/or registrations, market share (where available), stocking of Roadtreks and Roadtrek service parts, sales and service personnel and facilities, customer satisfaction, and warranty and service performance. Dealer must meet or exceed minimum levels of effectiveness as defined by Home & Park. Written effectiveness reviews prepared by Home & Park will be furnished to Dealer. For further details, terms and conditions, see www.roadtrek.com/dealers/ under Advertising/Intro & Programs/Dealer Elite Program.

120 Minimum Display Requirements for Major Local and Regional Shows

It is recognized and agreed that to achieve proper promotion of Roadtrek, a minimum number of Roadtrek models must be shown in every major show in Dealer's territory. At the time of this Dealer Agreement, the major local and regional shows in Dealer's territory are:

Name of Show	Location	Month

If any of these shows are located in another Roadtrek dealer's territory as well, then both Dealers will share the right to display Roadtreks in that show. From time to time, shows and events may change. Dealer will have first rights to display Roadtreks in new shows in Dealer's territory. Where Dealer's territory overlaps with another Roadtrek dealer's territory, both Dealers will share this right.

Minimum display requirements for each major local and regional show shall be equal to Dealer's "selling season" Stocking Requirements as noted in Section 109.

-3-

Home & Park may make exceptions or allow substitutions to these display requirements or add company owned vehicles to a show if discussed before hand with Dealer. This list may be amended from time to time by Home & Park if products are introduced and/or discontinued by Home & Park.

If Dealer will not meet the above minimum display requirements or will not participate in a major local or regional show in Dealer's territory, Home & Park reserves the right to allow another dealer to display Roadtreks in that show.

122 National and State Shows and Rallies

Home & Park will coordinate all national and state shows and rallies. Dealer will have the right to participate and share in the retail display and sale of Roadtreks at these events, provided Dealer can meet the requirements for staffing, sales, display vehicle purchasing, retail financing, service and delivery required for these events.

140 Factory Leads

All consumer leads provided by Home & Park to Dealer are the exclusive property of Home & Park and are to be used for the marketing of Roadtrek products only. No consumer lead provided by Home & Park shall be taken to see another manufacturer's class B motorhome unless such consumer specifically requests to see other manufacturers' class B motorhomes.

153 Programs & Incentives

Home & Park will deduct from each Roadtrek invoice all consumer and dealer rebates and incentives ("cash backs") and salesperson cash incentives (SPIFFs) in effect at the time of wholesale delivery to Dealer excluding salesperson recognition rewards. There shall be no allowances, payments or chargebacks for changes to these applicable rebates and/or incentives from the time of wholesale delivery of each Roadtrek to Dealer until the retail delivery of each Roadtrek by Dealer.

Additionally, Home & Park will deduct 1.0% from each Roadtrek invoice in lieu of its advertising assistance, show assistance and floor plan financing reimbursement programs.

Furthermore, Home & Park agrees to co-op an annual Roadtrek Top Salesman Award of \$5,000 dollars. Home & Park will pay \$2,500, plus half the cost of the trophy and brief case, chosen by McMahon's. This will be awarded annually at McMahon's Award night in December.

157 Home & Park Sales

Home & Park agrees to sell only through qualified, licensed dealers, when required to do so by state law.

166 Dealer Operations

170 Processing Orders

Home & Park will distribute new Roadtreks to its Dealer in a fair and equitable manner. If requested, Home & Park will provide information on the method of allocating distribution.

171 Roadtrek Orders and Confirmations

Roadtrek orders shall be in writing. Written order confirmations shall be returned promptly by Home & Park, and shall be signed and returned promptly by Dealer. For further details, terms and conditions, see www.roadtrek.com/dealers under Advertising/Intro & Programs/ Dealer Elite Program.

172 Order Cancellations

Acknowledged orders may be cancelled by Dealer with a \$250 cancellation charge if the vehicle has not been altered to Dealer's specifications and Home & Park is notified at least 2 weeks prior to shipping. Orders for Roadtreks with unusual specifications cannot be canceled. For further details, terms and conditions, see www.roadtrek.com/dealers under Sales/Policies & Procedures/Cancellation of Orders.

174 Prices and Terms

Dealer will be charged in accordance with effective published prices including delivery charges if requested and any applicable adjustments. All products shall be sold F.O.B. Home & Park's manufacturing plant and head office in Kitchener, Ontario. All costs relating to delivery shall be the responsibility of Dealer even though arrangements may have, at the request of Dealer, been made by Home & Park. Post dated checks issued for payments to Home & Park will not be accepted. For further details, terms and conditions, see Home & Park Motorhomes Order Form and www.roadtrek.com/dealers under Sales/Policies & Procedures/Prices, Specifications, Discounts & Rental Program.

Home & Park will provide Dealer with written price lists, and provide written notice of any price changes at least 10 days prior to shipping. Dealer may cancel order in writing within 10 days after receipt of notice of price changes. Prices, specifications and equipment are further subject to the terms and conditions of the Home & Park order form and invoice.

179 Delays or Failure to Produce

Dealer may cancel without a cancellation charge any order which has not been delivered within four weeks of a promised delivery date. Home & Park will not be liable for damages, whether direct or indirect or whether legal or equitable, as a result of any delay or failure to deliver Roadtreks however caused.

180 Warranty from Home & Park

Home & Park agrees to warrant Roadtreks to customer and authorizes Dealer to perform warranty work in accordance with Home & Park's Limited Motorhome Warranty as specified at www.roadtrek.com/dealers under Service & Warranty/Warranty Policy. It is specifically acknowledged by both Home & Park and Dealer that the only warranty expressed or implied, on Roadtreks, is the warranty of Home & Park, the chassis manufacturer, and the major component manufacturers.

187 Service Tools and Equipment

Dealer shall acquire and maintain for use in dealership operations such diagnostic equipment, tools, other equipment and machinery (of equal or comparable type and quality to that recommended from time to time by Home & Park), as are necessary to meet Dealer's warranty and service responsibilities in accordance with Home & Park's policies and procedures at www.roadtrek.com/dealers under Service & Warranty and applicable Product Information Circulars at www.roadtrek.com/dealers under Service & Warranty/Product Info Circulars.

189 Maintenance and Repair Service

Dealer shall perform other maintenance and repair service, excluding chassis maintenance and repair, reasonably required by all owners and users of Roadtreks regardless of where the Roadtrek was originally purchased. Dealer shall provide each customer with a copy of the repair order itemizing the work performed and the charges therefore.

190 Service Responsibilities

Dealer shall maintain and direct trained, quality service and parts departments, providing prompt, quality, and courteous service to all owners and users of Roadtreks regardless of where the Roadtrek was originally purchased. In the case of inability of the service department to provide required service, Dealer should refer the customer to Home & Park or to an approved subcontractor of Home & Park for service.

191 Pre-Delivery Service

Dealer shall be responsible for the inspection, conditioning and repair of the Roadtrek before delivery as set forth in the "QualityCare" Pre-Delivery Report furnished by Home & Park. This report shall be faxed to Home & Park within 48 hours of retail delivery.

192 Warranty and Campaign (Recall) Service

Dealer shall perform warranty service on any Roadtrek in accordance with Home & Park's Limited Motorhome Warranty regardless of where the Roadtrek was originally purchased. Dealer shall carry out campaign instructions

issued by Home & Park from time to time. Warranty and campaign (recall) service shall be claimed using allowances at www.roadtrek.com/dealers under Service & Warranty/Labour Allowances. Home & Park may ship parts in quantity to Dealer to effect such campaign service, and if such parts are in excess of Dealer's requirements, Dealer may return unused parts to Home & Park for credit after completion of the campaign. Dealer shall maintain adequate records for all warranty and service work performed by Dealer.

193 Warranty and Campaign Labor Claims

Dealer shall submit claims to Home & Park for reimbursement for the labor and parts used in performing warranty and campaign work. Dealer shall maintain adequate records and documents supporting such claims in accordance with the provisions of Home & Park's Limited Motorhome Warranty. Home & Park shall reimburse Dealer up to Dealer's posted retail labor rate based on Dealer's service facilities and personnel, market rates in Dealer's area, and Dealer's customer satisfaction ratings. For further details, terms and conditions, see www.roadtrek.com/dealers under Service & Warranty/Warranty Claims.

194 Warranty Parts Reimbursement

As long as Dealer maintains a stock of replacement parts as specified in clause 210, Home & Park shall reimburse Dealer for warranty parts in accordance with the details, terms and conditions specified at www.roadtrek.com/dealers under Service & Warranty/Parts/Minimum Parts Stocking Requirement.

195 Warranty Authorization

Home & Park authorizes Dealer to undertake warranty repairs in accordance with Home & Park's Limited Motorhome Warranty as specified at www.roadtrek.com/dealers under Service & Warranty/Warranty Policy.

197 Parts Lists

Parts lists will be provided.

200 Parts and Accessories

201 Genuine Parts

Dealer shall promote the use of Home & Park's genuine parts for service, repair and resale (including wholesale) within his Territory. Home & Park will provide price lists of its available parts and accessories. Home & Park shall endeavour to maintain on hand stocks of parts and accessories for current models and the two prior model years of Roadtreks.

210 Parts Stocks by Dealer

Dealer shall maintain a stock of replacement parts, including genuine parts, in accordance with Minimum Parts Stocking Requirement specified at www.roadtrek.com/dealers under Service & Warranty/Parts, in quantities adequate to meet anticipated customer demand. Dealer's responsibility to maintain stocks of genuine parts shall be subject to Home & Park's filling Dealer's orders.

300 Facility

301 Facility and Location

Dealer shall establish and maintain a dealership facility capable of meeting the sales and service potential of Dealer's Territory.

302 Responsibility

Dealer is fulfilling his responsibility for facility maintenance and upkeep if he is operating within normally accepted standards and practices for RV dealer operations.

303 Signage

-6-

Home & Park shall supply design information for signs. Dealer may install signs at Dealer's location identifying Roadtrek and Dealer's sales, parts and service capabilities, all to be compatible with Home & Park's designs.

320 Dealer Personnel

Dealer shall employ and train competent personnel of good character, who will enable Dealer to fulfill his responsibilities under this agreement. Home & Park may provide advice to Dealer in determining personnel requirements and in developing adequate training programs for sales, service and parts personnel. To meet the training needs of the dealership, Dealer shall cause his personnel to attend training courses conducted by Home & Park or its representatives from time to time.

So long as Dealer remains in good standing during the terms of this Agreement, Home & Park will cooperate fully with Dealer in all special promotions which predominantly display and advertise Roadtreks, subject to availability of personnel and resources.

330 Capital

Dealer shall at all times maintain and employ in connection with his dealership operations, separately from any other business of Dealer, such total investment, net working capital, adequate lines of wholesale credit and competitive retail financing plans for Roadtreks, that will enable Dealer to fulfill his responsibilities under this agreement.

350 Financial Reports

In furtherance of their mutual interests, Dealer shall furnish to Home & Park on an annual basis, a complete financial statement reflecting the true financial condition of the dealership operations. Upon review of each annual financial statement, Home & Park will advise Dealer in writing if they are approved for C.O.D. terms of payment. Financial information furnished by Dealer shall be held on a confidential basis by Home & Park and shall not be disclosed to any third party.

355 Delivery, Sales and Estimate Reports

To enable Home & Park to evaluate production schedules, Dealer agrees to complete and return Home & Park's Warranty Registration Form and provide estimates and sales reports as reasonably requested from time to time by Home & Park.

360 Customer Relations

Dealer shall cooperate in implementing Home & Park programs and develop and maintain his own customer relations programs designed to develop good relationships between Dealer and the public. Dealer shall promptly investigate and reasonably address all complaints brought to his attention by Home & Park or the public relating to the sale or servicing of Roadtreks in Dealer's locality, so as to develop public confidence in Dealer, Home & Park and Roadtreks. Dealer shall report to Home & Park the details of complaints received by Dealer relating to Home & Park's product.

370 Business Practices, Advertising and Programs

Dealer shall conduct dealership operations in a manner that will reflect favorably at all times on the reputation of Dealer, other authorized Roadtrek dealers and Home & Park.

375 Compliance with Laws, Rules and Regulations

Both Dealer and Home & Park shall comply with all applicable federal, state, provincial and local laws, rules and regulations in the sale and service of Roadtreks. Dealer and Home & Park will exchange information to comply with all federal, state, provincial and local consumer protection laws.

If any condition herein contravenes the valid laws of any state or province or other jurisdiction wherein this Agreement is to be performed, or denies access to the procedures provided by such laws, such condition shall be deemed modified to conform to such laws, and all other terms and conditions shall remain in full force and effect.

-7-

380 Dealer's Hours of Business

To the end that the needs of Roadtrek customers and owners are met, the dealership shall be open for business at least during all hours and days which are customary in the local area and lawful for such operations in Dealer's locality.

500 Termination of Agreement**501 Dealer Termination**

Dealer may terminate this agreement at any time by giving written notice of such intention to Home & Park at least 365 days prior to the effective date specified for termination.

520 Home & Park Termination

Home & Park shall not, directly or through any officer, agent or employee, terminate, cancel, fail to renew or substantially change the material terms of this Agreement (including the Territory) without good cause.

Except in instances of the insolvency or bankruptcy of Dealer, or assignment for the benefit of creditors by Dealer, or failure to meet sales commitments in section 111, Home & Park shall provide Dealer at least 365 days prior written notice of termination, cancellation, failure to renew or substantial change in the material terms of this Agreement. The notice shall state all the reasons for such action.

530 Good Cause

For purposes of this Agreement "good cause" shall include:

1. Bankruptcy, insolvency or an assignment for the benefit of creditors;
2. Any material breach of this Agreement including but not limited to clauses 109, 111, 112, 120, 140, 172, 187, 189, 190, 191, 192, 210, 301, 320, 330, 360, 370, 375 and 600;
3. Conviction of Dealer of a felony;
4. Failure of Dealer to conduct normal business operations in accordance with all minimum required standards, whether by this agreement or otherwise by law, for a consecutive period of 30 days;
5. Conducting operations of the dealership in such a fashion that it adversely affects the good name of Dealer or Home & Park.

588 Confidentiality Clause

Dealer agrees to keep the terms of this agreement confidential. Release of any of the information or programs to any person or corporation, without Home & Park's express written consent, will be grounds for instant cancellation under this agreement.

595 Repurchase Obligation

If this Agreement is terminated or canceled by Home & Park, Home & Park shall repurchase:

1. All inventories of new, unused and untitled Roadtreks sold by Home & Park to Dealer for resale within the previous 12 months at the original invoice price plus delivery charges and less a 5% repurchase charge for Roadtreks in Dealer's inventory more than 120 days.
2. All inventories of new and unused, parts and accessories sold by Home & Park to Dealer for resale and any special tools sold pursuant to this or any preceding dealership agreement with Home & Park. The repurchase price shall be the original invoice price plus delivery charges less a 15% restocking charge.

Home & Park shall pay Dealer within 30 days of receipt of the returned items.

If this Agreement is terminated, canceled or not renewed by Dealer, Home & Park shall have the right to repurchase, at its discretion, all or part of inventories of new, unused and untitled Roadtreks sold by Home & Park to Dealer for resale at the original invoice price plus delivery charges.

600 Transfer of Ownership or Change of Management

Dealer may transfer or sell all or part the ownership of the dealership (by sale of the business assets, stock transfer, or otherwise), or change executive management of the dealership, so long as such transfer, sale, or change is to a person(s) or corporate entity who is experienced, is creditworthy, has not been convicted of a felony, is properly licensed, and is otherwise qualified and; provided further, that such transfer, sale or change will not result in a relocation of the business and is reasonable under all circumstances and; provided further that such transfer, sale or change is approved by Home & Park.

630 Succession Upon Death

Dealer hereby certifies that the following named individual(s) is currently designated as successor(s) to the ownership interests in the dealership and to the rights under this contract in the event of the death or incapacity of Dealer:

Dealer may from time to time during the term of this Agreement change the certification of this paragraph by providing a written notification to Home & Park.

Dealer's rights under this Agreement may be assigned to the persons designated pursuant to this paragraph unless successor(s) is not creditworthy, has been convicted of a felony or is unable to obtain necessary licenses.

700 Voluntary Mediation and Arbitration

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by mediation and arbitration in the event that all parties involved in the dispute or disagreement should agree to do so, which shall then be subject to and proceed in accordance with the RV Manufacturer/Dealer Dispute Resolution Program. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. In the event that the parties do not all agree to resolve the dispute or disagreement by mediation and arbitration, the matter may proceed to resolution through the usual legal means.

800 General Provisions

801 Notices

All notices required by this Agreement shall be by certified mail or personal delivery to the following persons at the following addresses:

Home & Park: HOME & PARK MOTORHOMES, 100 Shirley Avenue, Kitchener, ON, N2B 2E1

Dealer: MEGA RV CORPORATION, doing business as MCMAHON'S RV, 1312 RV Center Dr #16, Colton, CA, USA, 92324.

802 Indemnification

Home & Park will indemnify and hold harmless Dealer from any and all claims, costs, judgments and expenses (including reasonable attorneys' fees) of whatever sort based on claims of product design or manufacturing defects.

803 Titles

Home & Park warrants the acceptability of titles under applicable state and federal statutes regarding make, model, serial number and year of both the Roadtrek and the chassis. Title to any Roadtrek and the respective payment provisions shall be governed by the terms and conditions of the Home & Park order form and invoice. Default by Dealer under such terms and conditions shall constitute default under this agreement.

IN WITNESS WHEREOF, the parties, who have authority to bind their respective corporations, and to make offer and accept fees and payments on behalf of their respective corporations, hereto have executed this Agreement.

-5-

Witness: Richard Siegel

MEGA RV CORPORATION,
doing business as MCMAHON'S RV

Per: [Signature] (seal)

Name (print): Burt McMahon

Title: President

Birth date: 2/15/62

Dated: This 21st day of February, 2006.

ACCEPTED BY:

Witness: [Signature]

Name (print): Paul Cassidy

HOME & PARK MOTORHOMES
Division of HANMAR MOTOR CORPORATION

Per: [Signature] (seal)

Name: Jim Hammill

Title: General Manager

Dated: This 22 day of February, 2006.

ROADTREK MOTORHOMES ROADTREK DEALER AGREEMENT

THIS AGREEMENT MADE BETWEEN:

ROADTREK MOTORHOMES, a division of HANMAR MOTOR CORPORATION, a company incorporated under the laws of the Province of Ontario, having its head office at 100 Shirley Avenue, Kitchener, Ontario, Canada, N2B 2E1 (herein after called "Roadtrek").

-and-

MEGA RV CORPORATION, doing business as MCMAHON'S RV, having its head office at 1312 RV Center Dr #16, Colton, CA, USA, 92324 and doing business at 5060 Scotts Valley Drive, Scotts Valley, CA, 95066 (herein after called "Dealer").

WHEREAS Roadtrek is engaged in the business of manufacturing and selling Roadtrek class 'B' motorhomes (herein after called "Roadtreks") in Canada, United States and other places.

AND WHEREAS Roadtrek is willing to sell Roadtreks to Dealer for resale.

AND WHEREAS Dealer desires to purchase such Roadtreks for resale.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, it is agreed by and between the parties hereto as follows:

100 Sales to Dealers

107 Selling Agreement

Dealer shall have the exclusive right to purchase, display and resell Roadtreks, parts and accessories in the Territory as mutually agreed to by Dealer and Roadtrek, including lease & fleet sales, but excluding factory sales to rental companies and at national and state/provincial shows. This agreement shall remain in full force and effect for a period of three (3) years unless it is terminated for cause as indicated in clause 375 or it is terminated as indicated in clauses 111, 501, and 620.

108 Dealer Territory (Primary Area of Market Responsibility)

Dealer territory shall be limited to a 50 mile radius of Scotts Valley, CA., so long as Dealer remains in good standing during the terms of this agreement, Roadtrek will not locate another dealer within Dealer's territory. Good Standing includes hitting minimum sales targets.

109 Sales Minimums

Dealer hereby agrees to achieve an annual minimum of ⁶⁰ ~~70~~ retail sales of Roadtrek Units for the market area.

The sales minimums set forth in the Dealer Agreement, as amended from time to time, and minimum stocking shall be reviewed and amended annually by RMI and Dealer. RMI shall have the right to increase or decrease such sales minimums by amounts consistent with RMI's national or state market penetration as determined by RMI in its discretion. Failure by Dealer to achieve its assigned sales minimums shall be grounds for termination of the Dealer Agreement by RMI. RMI may make reasonable adjustments to sales minimums in the event of unusual economic conditions affecting the Dealer's Market Area.

110 Basic Minimum Inventory

Dealer acknowledges that to remain in good standing under this Agreement, subject to product availability, new Roadtreks must be stocked and prominently displayed on all authorized lots in the Dealer's Territory. Dealer's basic minimum inventory of Models on hand or on order for prompt delivery is set forth below:

MODEL	210 Models	190 Models	170 Models	RS-Adventurous	SS-Agile
ON HAND OR ON ORDER	5	4	2	6	3

a. The basic minimum inventory on hand and on order will be reviewed annually by RMI and Dealer. Dealer agrees to any reasonable changes which RMI makes in good faith to any inventory levels. Failure by Dealer to maintain such prescribed basic minimum inventory shall be grounds for termination of the Dealer Agreement by RMI; provided, however, that no default shall be deemed to exist if Dealer orders replacements for Products sold from inventory within ten (10) days after such sale.

b. In the event RMI repurchases any inventory from Dealer for any reason, Dealer shall be liable to RMI for the cost of such repurchase, including freight, attorneys' fees, court costs, loss on resale, and any other costs related thereto, without regard to whether the inventory financing institution releases or impairs any right of subrogation.

111 Other Manufacturers' Products

Dealer may only stock Pleasureway class B motorhomes, and agrees not to stock any other class B motorhomes by any other manufacturers.

112 Dealer Commitment

Dealer agrees to purchase for retail sale a minimum of seventy-five (75) new and demonstrator Roadtreks per calendar year.

Dealer will not enter any agreement with any other class B manufacturer that will impact the ability of Dealer to meet or exceed the terms of this agreement.

113 Dealer Effectiveness

Dealer's effectiveness will be reviewed annually on the basis of Dealer's retail sales and/or registrations, market share (where available), stocking of Roadtreks and Roadtrek service parts, sales and service personnel and facilities, customer satisfaction, and warranty and service performance. Dealer must meet or exceed minimum levels of effectiveness as defined by Roadtrek. Written effectiveness reviews prepared by Roadtrek will be furnished to Dealer. For further details, terms and conditions see www.roadtrek.com/dealers/ under Advertising/Intro & Programs/Dealer Elite Program.

114 Dealer Credit Terms

If dealer is provided with floorplan by RMI, that financing is at the sole discretion of RMI. Financial statements will be provided upon request by the dealer to RMI's representatives. Interest payments on motorhomes held in dealer inventory will be made to RMI in accordance with lending agreements and company policies. The dealer has 14 days to forward a payment to RMI after a unit is retail sold and delivered to a retail customer. After fourteen days the dealer will start paying interest at US Prime plus one percent (annualized) to Roadtrek. This bill will be calculated upon receipt of the warranty card, and is due and payable upon receipt.

120 Minimum Display Requirements for Major Local and Regional Shows

It is recognized and agreed that to achieve proper promotion of Roadtrek, a minimum number of Roadtrek models must be shown in every major show in Dealer's territory. At the time of this Dealer Agreement, the major local and regional shows in Dealer's territory are:

Name of Show	Location	Month
Pleasanton RV Show	Pleasanton, CA	January
Vallejo RV Show	Vallejo, CA	January

If any of these shows are located in another Roadtrek dealer's territory as well, then both Dealers will share the right to display Roadtreks in that show. From time to time, shows and events may change. Dealer will have first rights to display Roadtreks in new shows in Dealer's territory. Where Dealer's territory overlaps with another Roadtrek dealer's territory, both Dealers will share this right.

Minimum display requirements for each major local and regional show shall be equal to Dealer's "selling season" Stocking Requirements as noted in Section 109.

Roadtrek may make exceptions or allow substitutions to these display requirements or add company owned vehicles to a show if discussed before hand with Dealer. This list may be amended from time to time by Roadtrek if products are introduced and/or discontinued by Roadtrek.

If Dealer will not meet the above minimum display requirements or will not participate in a major local or regional show in Dealer's territory, Roadtrek reserves the right to allow another dealer to display Roadtreks in that show.

122 National and State Shows and Rallies

Roadtrek will coordinate all national and state shows and rallies. Dealer will have the right to participate and share in the retail display and sale of Roadtreks at these events, provided Dealer can meet the requirements for staffing, sales, display vehicle purchasing, retail financing, service and delivery required for these events.

140 Factory Leads

All consumer leads provided by Roadtrek to Dealer are the exclusive property of Roadtrek and are to be used for the marketing of Roadtrek products only. No consumer lead provided by Roadtrek shall be taken to see another manufacturer's class B motorhome unless such consumer specifically requests to see other manufacturers' class B motorhomes.

157 Roadtrek Sales

Roadtrek agrees to sell only through qualified, licensed dealers.

169 Dealer Operations

170 Processing Orders

Roadtrek will distribute new Roadtreks to its Dealer in a fair and equitable manner. If requested, Roadtrek will provide information on the method of allocating distribution.

171 Roadtrek Orders and Confirmations

Roadtrek orders shall be in writing. Written order confirmations shall be returned promptly by Roadtrek, and shall be signed and returned promptly by Dealer. For further details, terms and conditions see www.roadtrek.com/dealers under Advertising/Intro & Programs/ Dealer Elite Program.

172 Order Cancellations

Acknowledged orders may be cancelled by Dealer with a \$250 cancellation charge if the vehicle has not been altered to Dealer's specifications and Roadtrek is notified at least 2 weeks prior to shipping. Orders for Roadtreks with unusual specifications cannot be canceled. For further details, terms and conditions see www.roadtrek.com/dealers under Sales/Policies & Procedures/Cancellation of Orders.

174 Prices and Terms

Dealer will be charged in accordance with effective published prices including delivery charges if requested and any applicable adjustments. All products shall be sold F.O.B. Roadtrek's manufacturing plant and head office in Kitchener, Ontario. All costs relating to delivery shall be the responsibility of Dealer even though arrangements may have, at the request of Dealer, been made by Roadtrek. Post dated checks issued for payments to Roadtrek will not be accepted. For further details, terms and conditions see Roadtrek Motorhomes Order Form and www.roadtrek.com/dealers under Sales/Policies & Procedures/Prices, Specifications, Discounts & Rental Program.

Roadtrek will provide Dealer with written price lists, and provide written notice of any price changes at least 10 days prior to shipping. Dealer may cancel order in writing within 10 days after receipt of notice of price changes. Prices, specifications and equipment are further subject to the terms and conditions of the Roadtrek order form and invoice.

179 Delays or Failure to Produce

Dealer may cancel without a cancellation charge any order which has not been delivered within four weeks of a promised delivery date. Roadtrek will not be liable for damages, whether direct or indirect or whether legal or equitable, as a result of any delay or failure to deliver Roadtreks however caused.

180 Warranty from Roadtrek

Roadtrek agrees to warrant Roadtreks to customer and authorizes Dealer to perform warranty work in accordance with Roadtrek's Limited Motorhome Warranty as specified at www.roadtrek.com/dealers under Service & Warranty/Warranty Policy. It is specifically acknowledged by both Roadtrek and Dealer that the only warranty expressed or implied, on Roadtreks, is the warranties of Roadtrek, the chassis manufacturer, and the major component manufacturers.

187 Service Tools and Equipment

Dealer shall acquire and maintain for use in dealership operations such diagnostic equipment, tools, other equipment and machinery (of equal or comparable type and quality to that recommended from time to time by Roadtrek), as are necessary to meet Dealer's warranty and service responsibilities in accordance with Roadtrek's policies and procedures at www.roadtrek.com/dealers under Service & Warranty and applicable Product Information Circulars at www.roadtrek.com/dealers under Service & Warranty/Product Info Circulars.

189 Maintenance and Repair Service

Dealer shall perform other maintenance and repair service, excluding chassis maintenance and repair, reasonably required by all owners and users of Roadtreks regardless of where the Roadtrek was originally purchased. Dealer shall provide each customer with a copy of the repair order itemizing the work performed and the charges therefore.

190 Service Responsibilities

Dealer shall maintain and direct trained, quality service and parts departments, providing prompt, quality, and courteous service to all owners and users of Roadtreks regardless of where the Roadtrek was originally purchased. In the case of inability of the service department to provide required service, Dealer should refer the customer to Roadtrek or to an approved subcontractor of Roadtrek for service.

191 Pre-Delivery Service

Dealer shall be responsible for the inspection, conditioning and repair of the Roadtrek before delivery as set forth in the "QualityCare" Pre-Delivery Report furnished by Roadtrek. This report shall be faxed to Roadtrek within 48 hours of retail delivery.

192 Warranty and Campaign (Recall) Service

Dealer shall perform warranty service on any Roadtrek in accordance with Roadtrek's Limited Motorhome Warranty regardless of where the Roadtrek was originally purchased. Dealer shall carry out campaign instructions issued by Roadtrek from time to time. Warranty and campaign (recall) service shall be claimed using allowances at www.roadtrek.com/dealers under Service & Warranty/Labour Allowances. Roadtrek may ship parts in quantity to Dealer to affect such campaign service, and if such parts are in excess of Dealer's requirements, Dealer may return unused parts to Roadtrek for credit after completion of the campaign. Dealer shall maintain adequate records for all warranty and service work performed by Dealer.

193 Warranty and Campaign Labor Claims

Dealer shall submit claims to Roadtrek for reimbursement for the labor and parts used in performing warranty and campaign work. Dealer shall maintain adequate records and documents supporting such claims in accordance with the provisions of Roadtrek's Limited Motorhome Warranty. Roadtrek shall reimburse Dealer up to Dealer's posted retail labor rate based on Dealer's service facilities and personnel, market rates in Dealer's area, and Dealer's customer satisfaction ratings. For further details, terms and conditions, see www.roadtrek.com/dealers under Service & Warranty/Warranty Claims.

194 Warranty Parts Reimbursement

As long as Dealer maintains a stock of replacement parts as specified in clause 210, Roadtrek shall reimburse Dealer for warranty parts in accordance with the details, terms and conditions specified at www.roadtrek.com/dealers under Service & Warranty/Parts/Minimum Parts Stocking Requirement.

195 Warranty Authorization

Roadtrek authorizes Dealer to undertake warranty repairs in accordance with Roadtrek's Limited Motorhome Warranty as specified at www.roadtrek.com/dealers under Service & Warranty/Warranty Policy.

197 Parts Lists

Parts lists will be provided.

200 Parts and Accessories

201 Genuine Parts

Dealer shall promote the use of Roadtrek's genuine parts for service, repair and resale (including wholesale) within his Territory. Roadtrek will provide price lists of its available parts and accessories. Roadtrek shall endeavor to maintain on hand stocks of parts and accessories for current models and the two prior model years of Roadtreks.

210 Parts Stocks by Dealer

Dealer shall maintain a stock of replacement parts, including genuine parts, in accordance with Minimum Parts Stocking Requirement specified at www.roadtrek.com/dealers under Service & Warranty/Parts, in quantities adequate to meet anticipated customer demand. Dealer's responsibility to maintain stocks of genuine parts shall be subject to Roadtrek's filling Dealer's orders.

300 Facility

301 Facility and Location

Dealer shall establish and maintain a dealership facility capable of meeting the sales and service potential of Dealer's Territory.

302 Responsibility

Dealer is fulfilling his responsibility for facility maintenance and upkeep if he is operating within normally accepted standards and practices for RV dealer operations.

303 Signage

Roadtrek shall supply design information for signs. Dealer may install signs at Dealer's location identifying Roadtrek and Dealer's sales, parts and service capabilities, all to be compatible with Roadtrek's designs.

320 Dealer Personnel

Dealer shall employ and train competent personnel of good character, who will enable Dealer to fulfill his responsibilities under this agreement. Roadtrek may provide advice to Dealer in determining personnel requirements and in developing adequate training programs for sales, service and parts personnel. To meet the training needs of the dealership, Dealer shall cause his personnel to attend training courses conducted by Roadtrek or its representatives from time to time.

So long as Dealer remains in good standing during the terms of this Agreement, Roadtrek will cooperate fully with Dealer in all special promotions which predominantly display and advertise Roadtreks, subject to availability of personnel and resources.

330 Capital

Dealer shall at all times maintain and employ in connection with his dealership operations, separately from any other business of Dealer, such total investment, net working capital, adequate lines of wholesale credit and competitive retail financing plans for Roadtreks, that will enable Dealer to fulfill his responsibilities under this agreement.

350 Financial Reports

In furtherance of their mutual interests, Dealer shall furnish to Roadtrek on an annual basis, a complete financial statement reflecting the true financial condition of the dealership operations. Upon review of each annual financial statement, Roadtrek will advise Dealer in writing if they are approved for C.O.D. terms of payment. Financial information furnished by Dealer shall be held on a confidential basis by Roadtrek and shall not be disclosed to any third party.

355 Delivery, Sales and Estimate Reports

To enable Roadtrek to evaluate production schedules, Dealer agrees to complete and return Roadtrek's Warranty Registration Form and provide estimates and sales reports as reasonably requested from time to time by Roadtrek.

360 Customer Relations

Dealer shall cooperate in implementing Roadtrek programs and develop and maintain his own customer relations programs designed to develop good relationships between Dealer and the public. Dealer shall promptly investigate and reasonably address all complaints brought to his attention by Roadtrek or the public relating to the sale or servicing of Roadtreks in Dealer's locality, so as to develop public confidence in Dealer, Roadtrek and Roadtreks. Dealer shall report to Roadtrek the details of complaints received by Dealer relating to Roadtrek's product.

370 Business Practices, Advertising and Programs

Dealer shall conduct dealership operations in a manner that will reflect favorably at all times on the reputation of Dealer, other authorized Roadtrek dealers and Roadtrek.

375 Compliance with Laws, Rules and Regulations

Both Dealer and Roadtrek shall comply with all applicable federal, state, provincial and local laws, rules and regulations in the sale and service of Roadtreks. Dealer and Roadtrek will exchange information to comply with all federal, state, provincial and local consumer protection laws.

If any condition herein contravenes the valid laws of any state or province or other jurisdiction wherein this Agreement is to be performed, or denies access to the procedures provided by such laws, such condition shall be deemed modified to conform to such laws, and all other terms and conditions shall remain in full force and effect.

380 Dealer's Hours of Business

To the end that the needs of Roadtrek customers and owners are met, the dealership shall be open for business at least during all hours and days which are customary in the local area and lawful for such operations in Dealer's locality.

300 Termination of Agreement

501 Dealer Termination

Dealer may terminate this agreement at any time by giving written notice of such intention to Roadtrek at least 365 days prior to the effective date specified for termination.

520 Roadtrek Termination

Roadtrek shall not, directly or through any officer, agent or employee, terminate, cancel, fail to renew or substantially change the material terms of this Agreement (including the Territory) without good cause.

Except in instances of the insolvency or bankruptcy of Dealer, or assignment for the benefit of creditors by Dealer, or failure to meet sales commitments in section 111, Roadtrek shall provide Dealer at least 180 days prior written notice of termination, cancellation, failure to renew or substantial change in the material terms of this Agreement. The notice shall state all the reasons for such good cause action.

530 Good Cause

For purposes of this Agreement "good cause" shall include:

1. Bankruptcy, insolvency or an assignment for the benefit of creditors;
2. Any material breach of this Agreement including but not limited to clauses 109, 111, 112, 120, 140, 172, 187, 189, 190, 191, 192, 210, 301, 320, 330, 360, 370, 375 and 600;
3. Conviction of Dealer of a felony;
4. Failure of Dealer to conduct normal business operations in accordance with all minimum required standards, whether by this agreement or otherwise by law, for a consecutive period of 30 days;
5. Conducting operations of the dealership in such a fashion that it adversely affects the good name of Dealer or Roadtrek.

588 Confidentiality Clause

Dealer agrees to keep the terms of this agreement confidential. Release of any of the information or programs to any person or corporation, without Roadtrek's express written consent, will be grounds for instant cancellation under this agreement.

595 Repurchase Obligation

If this Agreement is terminated or canceled by Roadtrek, Roadtrek shall repurchase:

1. All inventories of new, unused and untitled Roadtreks sold by Roadtrek to Dealer for resale within the previous 12 months at the original invoice price plus delivery charges and less a 5% repurchase charge for Roadtreks in Dealer's inventory more than 120 days.
2. All inventories of new and unused, parts and accessories sold by Roadtrek to Dealer for resale and any special tools sold pursuant to this or any preceding dealership agreement with Roadtrek. The repurchase price shall be the original invoice price plus delivery charges less a 16% restocking charge.

Roadtrek shall pay Dealer within 30 days of receipt of the returned items.

If this Agreement is terminated, canceled or not renewed by Dealer, Roadtrek shall have the right to repurchase, at its discretion, all or part of inventories of new, unused and untitled Roadtreks sold by Roadtrek to Dealer for resale at the original invoice price plus delivery charges.

600 Transfer of Ownership or Change of Management

Dealer may transfer or sell all or part the ownership of the dealership (by sale of the business assets, stock transfer, or otherwise), or change executive management of the dealership, so long as such transfer, sale, or change is to a person(s) or corporate entity who is experienced, is creditworthy, has not been convicted of a felony, is properly licensed, and is otherwise qualified and; provided further, that such transfer, sale or change will not result in a relocation of the business and is reasonable under all circumstances and; provided further that such transfer, sale or change is approved by Roadtrek.

630 Succession Upon Death

Dealer hereby certifies that the following named individual(s) is currently designated as successor(s) to the ownership interests in the dealership and to the rights under this contract in the event of the death or incapacity of Dealer.

Dealer may from time to time during the term of this Agreement change the certification of this paragraph by providing a written notification to Roadtrek.

Dealer's rights under this Agreement may be assigned to the persons designated pursuant to this paragraph unless successor(s) is not creditworthy, has been convicted of a felony or is unable to obtain necessary licenses.

700 Voluntary Mediation and Arbitration

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by mediation and arbitration in the event that all parties involved in the dispute or disagreement should agree to do so, which shall then be subject to and proceed in accordance with the RV Manufacturer/Dealer Dispute Resolution Program. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. In the event that the parties do not all agree to resolve the dispute or disagreement by mediation and arbitration, the matter may proceed to resolution through the usual legal means.

800 General Provisions

801 Notices

All notices required by this Agreement shall be by certified mail or personal delivery to the following persons at the following addresses:

Roadtrek: ROADTREK MOTORHOMES, 100 Shirley Avenue, Kitchener, ON, N2B 2E1

Dealer: MEGA RV CORPORATION, doing business as MCMAHON'S RV, 6441 Burt Rd #10, Irvine, CA 92618

802 Indemnification

Roadtrek will indemnify and hold harmless Dealer from any and all claims, costs, judgments and expenses (including reasonable attorneys' fees) of whatever sort based on claims of product design or manufacturing defects.

803 Titles

Roadtrek warrants the acceptability of titles under applicable state and federal statutes regarding make, model, serial number and year of both the Roadtrek and the chassis. Title to any Roadtrek and the respective payment provisions shall be governed by the terms and conditions of the Roadtrek order form and invoice. Default by Dealer under such terms and conditions shall constitute default under this agreement.

IN WITNESS WHEREOF, the parties, who have authority to bind their respective corporations, and to make offer and accept fees and payments on behalf of their respective corporations, hereto have executed this Agreement.

MEGA RV CORPORATION,
doing business as MCMAHON'S RV

Witness: _____

Per: [Signature] (seal)
Name (print): Bruce McMahon
Title: President
Birth date: 2/12/62
Dated: This 3rd day of JANUARY 2008

ACCEPTED BY:

ROADTREK MOTORHOMES
Division of HANMAR MOTOR CORPORATION

Witness: [Signature]
Name (print): D. Allen

Per: [Signature] (seal)
Name: Paul Cassidy
Title: Vice President of Sales
Dated: This 8 day of FEBRUARY 2008