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Exempt from filing fees  
Gov.Code §6103

8  
9 **SUPERIOR COURT OF CALIFORNIA**  
10 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

11 THE PEOPLE OF THE STATE OF ) Case No.  
CALIFORNIA and THE CITY OF SAN )  
DIEGO, a municipal corporation, )  
12 )  
Petitioners and Plaintiffs, )  
13 ) **COMPLAINT FOR ABATEMENT**  
v. ) **OF PUBLIC NUISANCE; PETITION**  
14 ) **FOR WRIT OF MANDATE**  
SUNROAD CENTRUM, L.P., a California ) **[CCP §1085]; VIOLATION OF**  
15 Limited Partnership, SUNROAD ASSET ) **UNFAIR PRACTICES ACT;**  
MANAGEMENT, INC., a California ) **INJUNCTION AND OTHER**  
16 corporation, SUNROAD ENTERPRISES, ) **EQUITABLE RELIEF**  
CALIFORNIA DEPARTMENT OF )  
17 TRANSPORTATION, AERONAUTICS ) Judge:  
DIVISION, and DOES 1 through 50, inclusive, ) Dept:  
18 ) Trial Date: Not Yet Set  
Respondents and Defendants. ) Complaint Filed:  
19 )

20  
21 The People of the State of California (“People”) and the City of San Diego, a charter  
22 city and municipal corporation (“City”), by and through Michael Aguirre, the City’s  
23 independently elected City Attorney, herein allege:

24 **JURISDICTION AND VENUE**

25 1. At all times mentioned herein, the City has been, and is, a charter city  
26 operating and existing as a municipal corporation, under the laws of the State. The City by the  
27 powers vested in the City Attorney pursuant to Section 40 of the San Diego City Charter  
28 (“Charter”), brings this action pursuant to California Civil Code §§ 3480, 3491 and 3494;

1 Government Code § 38773, 38773.1, 38773.5 and 50485.2; and San Diego Municipal Code  
2 §§ 11.0210, 121.0302(b)(4) and 121.0314, to obtain a preliminary injunction, permanent  
3 injunction, civil penalties, and other equitable relief as a result of Defendants SUNROAD  
4 CENTRUM, L.P., a California Limited Partnership (“Sunroad Centrum”), SUNROAD  
5 ASSET MANAGEMENT, INC., a California Corporation (“Sunroad Asset”), and  
6 SUNROAD ENTERPRISES’ (hereinafter collectively referred to as “Sunroad”), violations of  
7 California law and the San Diego Municipal Code. The City also petitions the Court pursuant  
8 to Code of Civil Procedure §1085 for an order compelling the California Department of  
9 Transportation, Aeronautical Division (“DOT”) to enforce the State Aeronautics Act (Pub.  
10 Res. Code §21001 et seq.) as required by law.

11 2. The People bring this action pursuant to California Business and Professions  
12 Code §§17203, 17205, and 17206 to obtain a preliminary injunction, permanent injunction,  
13 civil penalties, fines, costs, restitution and other equitable relief as a result of Sunroad’s  
14 violation of California Unfair Practices Act.

15 3. More specifically, the People and the City (collectively “Plaintiffs”) seek to  
16 enjoin the Sunroad Defendants, and each of them, from continuing to construct a twelve (12)  
17 story commercial office building (“Sunroad Centrum I Building”) located 0.7 nautical miles  
18 (“NM”) from the City’s Montgomery Field Airport (“Montgomery Field”). The Sunroad  
19 Centrum I Building has been determined by the Federal Aviation Administration (“FAA”) to  
20 be a hazard to air navigation at Montgomery Field. As a hazard to air navigation, the Sunroad  
21 Centrum I Building, not only poses a serious threat to the health and safety of the citizens of  
22 the City and all who utilize Montgomery Field, the existence of a “hazard” at or near  
23 Montgomery Field jeopardizes the City and County of San Diego’s (“County”) continued  
24 receipt of millions of dollars of federal and state airport grant funds presently allocated to the  
25 County for all airports within the County, including Montgomery Field.

26 4. At all times mentioned herein, the omission or commission of acts by the  
27 Sunroad Defendants, and each of them, occurred within the territorial limits of the City.  
28 Venue of this action in the County of San Diego is mandated, therefore, by California Code of

1 Civil Procedure §394.

2 **BACKGROUND**

3 5. The City is the owner and operator of Montgomery Field, a general civil  
4 aviation airport within the City limits, located in the Kearny Mesa area of the City.  
5 Montgomery Field is home base to approximately 600 aircraft and offers a 3400 foot lighted  
6 runway served by an Instrument Landing System (“ILS”), a 3,400 foot parallel runway, and a  
7 3,400 foot crosswind runway, monitored by a central air traffic control tower. Montgomery  
8 Field is open to the public and presently operates daily from 6:00 a.m. to 9:00 p.m.  
9 Montgomery Field shares its airspace with Marine Corps Air Station Miramar and San Diego  
10 International Airport at Lindberg Field.

11 6. The Defendant Sunroad Centrum Partners, LP, (“Sunroad Centrum”) is a  
12 California limited partnership, doing business in the State and within the City. Sunroad  
13 Centrum’s business address is 445 East Gate Mall, Suite 400, San Diego, California 92121.

14 7. The Defendant Sunroad Asset Management, Inc. (“Sunroad Asset”) is a  
15 California Corporation, whose business address is 445 East Gate Mall, Suite 400, San Diego,  
16 California 92121. The City is informed and believes, and thereupon alleges, that Sunroad  
17 Asset is the Managing Partner of Sunroad Centrum.

18 8. The Defendant Sunroad Enterprises (“Sunroad Enterprises”), is a real estate  
19 development and investment company, whose business address is 445 East Gate Mall, Suite  
20 400, San Diego, California 92121. The true nature of Sunroad Enterprise’s business status is  
21 presently unknown to Plaintiffs. Plaintiffs are informed and believe and thereupon allege that  
22 Sunroad Enterprises is the parent company, or holding company, for both Sunroad Centrum  
23 and Sunroad Asset. Plaintiffs will amend this Complaint to allege Sunroad Enterprise’s true  
24 business status when such becomes known to Plaintiffs. Sunroad Centrum, Sunroad Asset,  
25 and Sunroad Enterprises are hereinafter collectively referred to as “Sunroad.”

26 9. The Respondent California Department of Transportation, Division of  
27 Aeronautics (“DOT”) is the State agency charged with the duty to foster and promote the  
28 development of a safe, efficient, dependable, and environmentally compatible air

1 transportation system and to administer the provisions of the California Aeronautics Act,  
2 Public Utilities Code (“PUC”) § 21001 et seq. The DOT administers noise regulation and land  
3 use planning laws that foster compatible land use around airports and encourages  
4 environmental mitigation measures to lessen noise, air pollution, and other impacts caused by  
5 aviation. The DOT is directly charged with the duty to protect persons and property on the  
6 ground over which an air hazard is known to exist.

7 10. The true names or capacities, whether individual, corporate, associate, or  
8 otherwise, of respondents and defendants DOE 1 through 50, are unknown to Plaintiffs, who  
9 therefore sues such defendants by such fictitious names. Plaintiffs will amend this complaint  
10 to show the true names and capacities of the DOE respondents and defendants when such has  
11 been ascertained. Plaintiffs are informed and believe and thereupon allege, that each  
12 respondent or defendant designated as a DOE is responsible in some manner for the acts,  
13 omission, and damages herein alleged. Plaintiffs are further informed and believe certain City  
14 agents may be cooperating and colluding with Defendants, and each of them. Therefore,  
15 Plaintiffs will further amend this complaint to add these persons as DOE Defendants, should  
16 such prove necessary.

17 11. Plaintiffs are informed and believe, and thereupon allege, that at all times  
18 herein mentioned each of the respondents or defendants was a parent company, associated  
19 business entity, managing business entity, agent, employee or authorized representative of the  
20 remaining defendants, and in doing the things hereinafter alleged, was acting within the  
21 course and scope of such employment, or representative capacity.

22 12. In or about February 11, 2005, Sunroad Centrum made application to the  
23 City’s Development Services Department (“DSD”) for a permit to construct a 12 story  
24 206,000 square foot commercial office building with subterranean parking (“Sunroad  
25 Centrum I Building” or “Project 64541”) on property owned or controlled by Sunroad known  
26 by San Diego County Tax Assessor Parcel Numbers (“APN”) 369-220-51 through 369-220-  
27 73 (hereinafter the “Project Site”).

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1           13.     The Project Site is approximately 0.7 NM of the City's Montgomery Field  
2 airport within Planning Area 1-A of the City's New Century Center Master Plan, and within  
3 the City's Kearny Mesa Community Planning area.

4           14.     The Sunroad Centrum I Building is actively marketed by Sunroad as the  
5 "tallest building" in Kearny Mesa, "capped by a great architectural roof element reaching for  
6 the sky." Sunroad claims two additional office buildings, one towering 14 stories to  
7 approximately 200 feet above ground level ("AGL"), and the other reaching 20 stories to  
8 approximately 235 feet AGL, are planned and will complete the complement of "high rises"  
9 surrounding the City's Montgomery Field. All of these buildings violate the height  
10 restrictions established by the FAA for buildings near civil airports, such as Montgomery  
11 Field.

12           15.     Pursuant to the City's Municipal Code, Chapter 11 (Land Development  
13 Procedures), Article 2, §112.0501, applications for land development permits are processed in  
14 accordance with one of five discretionary decision processes. The subject matter of the  
15 development application determines the process that shall be followed for a particular permit  
16 application. In this instance, based upon the terms of the previously approved New Century  
17 Center Master Plan, the Sunroad Centrum I Building permit application was processed under  
18 a "Process Two" substantial conformance review designation. Process Two allows an  
19 application to be approved, conditionally approved, or denied by the City's DSD staff without  
20 review by the City's Planning Commission or approval by the City Council. In this case, the  
21 Sunroad Centrum application for the Sunroad Centrum I Building was reviewed for its  
22 substantial conformance with the previously approved New Century Center Master Plan. On  
23 or about February 10, 2006, the Sunroad Centrum I Building was found to be in substantial  
24 conformance with the New Century Center Master Plan. Plaintiffs are informed and believe  
25 construction of the Sunroad Centrum I Building commenced shortly thereafter, in or about  
26 March 2006.

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1           16.     Title 14 of the Code of Federal Regulations, Chapter I (Federal Aviation  
2 Administration, Department of Transportation) Subchapter E, Part 77 (Objects Affecting  
3 Navigable Airspace) (hereinafter “Part 77”), establishes standards for determining  
4 obstructions in navigable airspace, and sets forth reporting requirements for proposed  
5 construction that would affect the navigable airspace at or near airports.

6           17.     Pursuant to Subpart “B” of Part 77, each person proposing any kind of  
7 construction within critical horizontal distances of airport runways as established by the  
8 Federal Aviation Administration (“FAA”) must provide notice of any proposed construction  
9 (“Notice”) to the FAA setting forth the specific, location, height, and other dimensions of the  
10 proposed construction. The purpose of the Notice is to allow the FAA the opportunity to  
11 evaluate the effect of the construction on the operational procedures of the airport and the  
12 possible hazardous effect of the proposed construction on air navigation.

13           18.     Pursuant to Part 77, §77.17, Notice to the FAA must be submitted at least 30  
14 days before any application for a building construction permit is made. In the case of the  
15 Sunroad Centrum I Building, therefore, Sunroad should have provided Notice to the FAA in  
16 or before February 2005 of its plan to apply for a permit to construct the Sunroad Centrum I  
17 Building. However, Plaintiffs are informed and believe, and thereupon allege, it was not until  
18 April of 2006, after construction was fully underway on the Sunroad Centrum I Building, that  
19 Sunroad first contacted the FAA. Plaintiffs are informed and believe, and thereupon allege  
20 that Sunroad’s notice to the FAA reluctantly came about as a result of strenuous objection to  
21 the building’s construction by pilots, the operators of Montgomery Field, and the City’s  
22 Airport Advisory Committee.

23           19.     Plaintiffs are informed and believe and thereupon allege that on or about April  
24 24, 2006, the FAA responded to Sunroad’s Notice and issued Aeronautical Study No 2006-  
25 AWP-638-OE notifying Sunroad the FAA had conducted an aeronautical study of the  
26 Sunroad Centrum I Building in accordance with the provisions of 49 U.S.C.A. 44718 and Part  
27 77 (“First FAA Determination”). The First FAA Determination found the Sunroad Centrum I  
28 Building at 180 feet AGL exceeded FAA airport obstruction standards. The FAA concluded

1 the building would, therefore, have an adverse physical or electromagnetic interference effect  
2 upon navigable airspace or on the navigation facilities located at Montgomery Field. The  
3 FAA notified Sunroad that any height exceeding 160 feet AGL constituted a hazard. The  
4 FAA therefore issued a "Notice of Presumed Hazard" to Sunroad. The FAA advised that  
5 pending resolution of the building height issue, no construction of the Sunroad Centrum I  
6 Building should proceed, not even at a reduced elevation.

7 20. Plaintiffs are informed and believe, and thereupon allege, that despite the First  
8 FAA Determination concluding the Sunroad Centrum I Building should not be allowed to  
9 proceed, Sunroad ignored the FAA's directive and proceeded to frame the Sunroad Centrum  
10 Building to its maximum planned height of 180 feet AGL.

11 21. Plaintiffs are informed and believe that following the First FAA Determination  
12 and issuance of the FAA Notice of Presumed Hazard in or about June of 2006, Sunroad  
13 submitted a second Notice to the FAA falsely stating the plans for the Sunroad Centrum I  
14 Building had been modified reducing the maximum building height to 160 feet AGL.  
15 Plaintiffs are informed and believe, and thereupon allege, this was never the case as  
16 construction plans for the building clearly indicated a completion height of 180 feet AGL, and  
17 no amendment to Sunroad's building permit was ever processed by City's DSD as would  
18 have been required by the City's Municipal Code.

19 22. On or about June 27, 2006, based on this false and misleading information, the  
20 FAA issued Aeronautical Study No 2006-AWP-3876-OE, a second determination regarding  
21 the Sunroad Centrum I Building ("Second FAA Determination"). Based on the erroneous  
22 information that the building had been modified to a maximum height of 160 feet AGL, the  
23 Second FAA Determination found the building would no longer exceed obstruction  
24 standards and would not be a hazard to air navigation, provided the building was marked and  
25 lighted in accordance with FAA regulations. The Second FAA Determination notified  
26 Sunroad that as a condition of the FAA's finding of "no hazard to air navigation" Sunroad  
27 would be required to notify the FAA at least 10 days prior to the commencement of actual  
28 construction on the building, and again within 5 days after the construction had reached its

1 greatest height of 160 feet AGL. The Second FAA Determination informed Sunroad that any  
2 change in height would void the “no hazard” determination. Sunroad was further informed  
3 that the maximum height of 160 feet AGL included the height of temporary construction  
4 equipment, such as cranes used during the actual construction of the building. Sunroad was  
5 informed the equipment must not exceed the overall height of 160 feet AGL without a  
6 separate notice to the FAA. Despite the Second FAA Determination’s warnings, Sunroad  
7 proceeded to frame the building to its maximum planned height of 180 feet AGL, and to erect  
8 construction cranes that exceeded 180 feet AGL without any notification to the FAA  
9 whatsoever.

10 23. In or about August, 11, 2006, the FAA completed a third study of the Sunroad  
11 Centrum I Building, aeronautical study No. 2006-AWP-4601-OE (“Third FAA  
12 Determination”). The Third FAA Determination again assessed the building at 180 feet  
13 AGL—the true height of the building as framed by Sunroad. The FAA found the Sunroad  
14 Centrum I Building at its actual height of 180 feet AGL posed a substantial adverse effect on  
15 the safe and efficient utilization of the navigable airspace by aircraft and the operation of air  
16 navigations at the City’s Montgomery Field.

17 24. More specifically, the Third FAA Determination found the Sunroad Centrum I  
18 Building, at its true height of 180 feet AGL and 3,424 feet from Runway 10L’s physical  
19 approach end, exceeded the FAA horizontal surface Obstruction Standards of Part 77 applied  
20 to Montgomery Field by 19 feet AGL. The FAA further determined the height of the building  
21 at 180 feet AGL would result in the need to change the minimum instrument flight altitudes  
22 within the Montgomery Field terminal area and change the controlling obstacle, circling, and  
23 other normal use operations applied to the public air traffic use at Montgomery Field.

24 25. The Third FAA Determination also considered and analyzed the impact on  
25 existing and proposed arrival, departure, and en route procedures for aircraft operating under  
26 both visual flight rules and instrument flight rules at Montgomery Field. It studied the impact  
27 on all existing and planned public use airports, military airports and aeronautical facilities in  
28 the surrounding area, as well as the cumulative impact resulting from the studied obstruction

1 when combined with the impact of other existing or proposed structures in the vicinity. The  
2 Third FAA Determination concluded the Sunroad Centrum I Building would have a  
3 substantial adverse effect on air navigation at Montgomery Field and, in fact, constituted a  
4 Hazard to air traffic. The FAA, therefore, issued an FAA Hazard Determination (“Hazard  
5 Determination”). Sunroad did not appeal the FAA’s Hazard Determination. The FAA’s  
6 Hazard Determination became final on September 20, 2006.

7         26. Plaintiffs are informed and believe and thereupon allege that had the City been  
8 provided with the FAA’s Hazard Determination over a year earlier, at the time of Sunroad’s  
9 permit application, or at the time of the City’s Kearny Mesa Community Planning Group  
10 review of the building for substantial compliance, the City and Community Planning Group  
11 would not have recommended approval of the Process Two substantial conformance review  
12 for the Sunroad Centrum I Building.

13         27. On or about September 14, 2006, the DOT contacted Sunroad to advise it had  
14 been made aware of the FAA’s Hazard Determination and violation of Part 77. As such, the  
15 DOT advised Sunroad the construction of the Sunroad Centrum I Building was in violation of  
16 California Public Utilities Code §21659 (“PUC §21659”).

17         28. PUC §21659 specifically prohibits any person from constructing any structure  
18 which exceeds the obstruction standards related to objects affecting navigable airspace  
19 contained in Part 77 unless a permit allowing the construction is issued by the DOT. The  
20 DOT advised Sunroad that unless they received a permit from the DOT, it would be unlawful  
21 to proceed with construction of the Sunroad Centrum I Building.

22         29. On or about September 18, 2006, Sunroad, by and through its attorneys,  
23 corresponded with the DOT objecting to the DOT’s request for Sunroad to apply for a DOT  
24 permit pursuant to PUC §21659(a). Sunroad asserted no permit was required because the  
25 FAA had, as a precaution, already raised the required height circling limits for Montgomery  
26 Field; because the building received substantial compliance approval by the City; and because  
27 the building did not technically fall within the City’s Airport Environs Overlay Zone  
28 (“AEOZ”). Sunroad objected that both the DOT and the City lacked any jurisdiction over the

1 building.

2 30. On or about September 29, 2006, the DOT again notified Sunroad that the  
3 construction of the Sunroad Centrum I Building was in violation of PUC §21659(a). The  
4 DOT warned Sunroad that without issuance of a permit by the DOT, continued construction  
5 of any part of the building exceeding 160 feet AGL was unlawful. The DOT further notified  
6 Sunroad that if construction proceeded in violation of PUC §21659, Sunroad was “proceeding  
7 at [its] own risk” and would assume all liability for any accident that might occur.

8 31. On or about October 3, 2006, Sunroad, by and through its attorney,  
9 corresponded with the DOT and agreed, under protest, to apply for the required DOT permit;  
10 however, Plaintiffs are informed and believe, and thereupon allege, that no permit application  
11 was ever completed nor submitted to the DOT by Sunroad as promised. Even so,  
12 construction on the Sunroad Centrum I Building continued unimpeded.

13 32. On or about October 13, 2006, the DOT again corresponded with Sunroad  
14 requesting Sunroad submit the appropriate application to the DOT within 10 days to enable  
15 the DOT to consider the permit request.

16 33. On or about October 19, 2006, after the City received notice from the DOT  
17 that Sunroad had failed to apply for the required DOT permit, and in light of Sunroad’s  
18 adamant refusal to halt construction on the Sunroad Centrum I Building, the City Attorney’s  
19 Office advised the City’s DSD to issue a Stop Work Order to halt construction of the Sunroad  
20 Centrum I Building.

21 34. On or about October 25, 2006, the DOT formally requested in writing that the  
22 City issue a Stop Work Order for the Sunroad Centrum I Building and move forward with  
23 building permit revocation proceedings.

24 35. On or about October 26, 2006, Sunroad, by and through its attorney,  
25 corresponded with the City, again adamantly asserting the Sunroad was not in violation of  
26 Government Code §50485.2, was not in violation of the City’s Municipal Code, and was not  
27 required to appeal any determination by the FAA that the building posed a “Hazard.”  
28 Sunroad’s position remained firm that its right to develop its property and to construct the

1 Sunroad Centrum I Building to its maximum height was a “vested right” arising from a prior  
2 development agreement between Sunroad’s predecessor in interest and the City. Sunroad  
3 further asserted that the effect on Montgomery Field was “negligible” as the building only  
4 protruded 17 feet into a 302 foot buffer zone of vertical clearance for the circling approach to  
5 Runway 28R.

6 36. On October 27, 2006, the City issued a Stop Work Order for the Sunroad  
7 Centrum I Building, ordering all work above 160 feet AGL cease until FAA regulations were  
8 met.

9 37. Pursuant to the City’s Municipal Code §121.0308, the issuance or granting of  
10 any development permit or construction permit, or approval of any plan, or specification,  
11 does not constitute a permit for, or an approval of, any violation of any of the provisions of  
12 the City’s Land Development Code, State or Federal law. Development permits, construction  
13 permits, or inspections presuming to give authority to violate or cancel the provision of the  
14 City’s Land Development Code, other City ordinance or law, are invalid.

15 38. Pursuant to the City’s Municipal Code §121.0308(b) the issuance of a  
16 development permit or construction permit based on plans specification, and other data does  
17 not prevent the City from stopping building operations that are in violation of the Land  
18 Development Code or any other applicable law.

19 39. Pursuant to the City’s Municipal Code §121.0309(a) whenever work is being  
20 performed that is contrary to the provisions of the City’s Land Development Code, the City  
21 may order the work stopped by issuing a Stop Work Order. Violations of the Land  
22 Development Code are treated as strict liability offenses, regardless of intent, and may be  
23 abated by criminal or civil injunctive relief.

24 40. On or about November 27, 2006, the DOT Aeronautics Division again  
25 communicated with Sunroad Centrum, reaffirming the DOT’s position that a permit was  
26 necessary to allow further construction above 160 feet to continue, restating the DOT’s goal  
27 to reduce the height of the Sunroad Centrum I Building to a level not considered “hazardous”  
28 by the FAA. Plaintiffs are informed and believe, and thereupon allege, that Sunroad has

1 steadfastly refused to halt construction of the Sunroad Centrum I Building, despite the clear  
2 and present danger it poses to the health and welfare of the City, its citizens and all those who  
3 rely upon and utilized the City's Montgomery Field, and despite the DOT's consistent  
4 requests to Sunroad to comply with State and Federal law. Due to the imminent danger to the  
5 public at large and all those who utilize Montgomery Field, the City Attorney has determined  
6 the action taken by Plaintiffs herein is necessary to safeguard and protect the citizens of the  
7 City and the financial interest of the City and its airports.

8 **FIRST CAUSE OF ACTION**

9 **(ABATEMENT OF PUBLIC NUISANCE)**

10 41. Plaintiffs reallege and incorporate herein by this reference paragraphs 1  
11 through 40 as fully set forth herein.

12 42. Pursuant to the provisions of the California Airport Approaches Zoning Law  
13 (Gov. Code §50485 et seq.), and more specifically, §50485.4 therein, where there is any  
14 conflict in zoning, or other regulations applicable to height of structures around an airport, or  
15 use of land around an airport, the more stringent regulation (in this case, Part 77 and PUC  
16 §21659), shall govern and prevail over any other provision of law, including, but not limited  
17 to, the City's Municipal Code zoning regulations, if such conflict should exist.

18 43. Pursuant to Government Code §50485.2, if it is found that an airport hazard  
19 exists and endangers the lives and property of users of the airport and occupants of land in its  
20 vicinity, or otherwise reduces the landing, taking off and maneuvering of aircraft utilizing a  
21 public airport, destroying or impairing the utility of the airport and public's investment  
22 therein, such a hazard is deemed a "public nuisance." Therefore, based upon the FAA's and  
23 the DOT's determination that the Sunroad Centrum I Building constitutes a "hazard" to  
24 Montgomery Field, the building, at its current height of 180 feet AGL, is a public nuisance as  
25 a matter of law.

26 44. The Sunroad Centrum I Building also constitutes a "public nuisance" pursuant  
27 to §§3480 and 3491 of the Civil Code, requiring abatement, because it is a "nuisance" that  
28 affects the entire community, although the extent of the annoyance or damage inflicted upon

1 the individuals may be unequal.

2 45. Unless the public nuisance created by the height of the Sunroad Centrum I  
3 Building at 180 feet AGL is abated, and the Sunroad Defendants, and each of them, are  
4 enjoined and ordered to remove any and all of the Sunroad Centrum I Building exceeding 160  
5 feet AGL, or otherwise comply with the requirements set forth by the DOT for construction  
6 of the building, the health, safety and well-being of the citizens of the City, and all those that  
7 rely upon and utilize Montgomery Field, will suffer irreparable damage.

8 46. Plaintiffs have no plan, speedy, or adequate remedy at law and, therefore,  
9 seeks the aforementioned injunctive to abate the public nuisance as authorized by §§ 526 and  
10 731 of the Code of Civil Procedure.

11 47. As more fully set forth herein, the FAA, the DOT, and the City have all given  
12 notice to the Sunroad Defendants, and each of them, requesting the abatement of the nuisance  
13 created by the Sunroad Centrum I Building's violation of Part 77 and intrusion into navigable  
14 airspace, but the Sunroad Defendants, and each of them, have refused, and continue to refuse,  
15 to abate the nuisance.

16 48. For this reason Plaintiffs shall request the Court issue a preliminary and  
17 permanent injunction enjoining the Sunroad Defendants and their agents, servants,  
18 employees, and all persons acting in concert with, or for them, from unlawfully continuing  
19 with the construction of the Sunroad Centrum I Building. Plaintiffs shall also request the  
20 Court issue a mandatory injunction ordering all portions of the Sunroad Centrum I Building  
21 constituting a "hazard" (as determined by the FAA and DOT) be permanently deconstructed  
22 and removed.

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**SECOND CAUSE OF ACTION**  
**(WRIT OF MANDATE )**

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3       49.     Plaintiffs reallege and incorporate herein by this reference paragraphs 1  
4 through 48 as if fully set forth herein.

5       50.     The DOT is the duly authorized State agency in charge of airports and is  
6 vested with the authority to enforce the State Aeronautics Act (Pub. Res. Code §21001 et  
7 seq.) As such, the DOT has a clear, present, and ministerial duty to compel Sunroad to  
8 comply with Part 77, Subpart B, of the Code of Federal Regulations and California Public  
9 Utilities Code §21659. California Public Utilities Code §21659 incorporates Part 77 fully by  
10 reference, thereby requiring that, as a matter of State law, no structure which exceeds the  
11 obstruction standards related to objects affecting navigable airspace contained in Part 77 be  
12 allowed unless a permit allowing the construction is issued by the DOT.

13       51.     Pursuant to Public Resources Code §21660, the DOT may refuse issuance of a  
14 permit under §21659 if it determines the construction would constitute a hazard to air  
15 navigation or create an unsafe condition for air navigation; however, despite the DOT  
16 repeated request for Sunroad to apply for the required permit, Sunroad has failed to do so, and  
17 the DOT has not taken action to enforce the compliance requirements of the State Aeronautics  
18 Act.

19       52.     Pursuant to Public Utilities Code §21253, the DOT is vested with the authority  
20 to enforce, by injunction or other legal process, the State Aeronautics Act, including §21659.  
21 By the DOT's failure to utilize its statutory enforcement power, it is allowing a public  
22 nuisance to continue unabated and to prolong the actual threat to public safety created by the  
23 public nuisance to continue to exist unabated, all to the detriment of the public at large and all  
24 who utilize and rely upon the safe existence and operation of the City's Montgomery Field  
25 airport. Further, the non-compliance with Part 77 jeopardizes the City and County's  
26 continued receipt of Federal and State grant funds necessary for the operation of all airports  
27 within the County.

28     ///



1 the future.

2 58. As a result of the Sunroad Defendants' unlawful conduct as alleged, the  
3 Sunroad Defendants, and each of them, are subject to civil penalties, disgorgement, and  
4 restitution of any amounts received as a result of their unlawful act as permitted by Business  
5 and Professions Code § 17206.

6 59. Unless enjoined by order of the Court as prayed for herein, the Sunroad  
7 Defendants, and each of them, may, or will, continue their unlawful course of conduct alleged  
8 hereinabove.

9 60. The unlawful conduct, acts and omissions of the Sunroad Defendants in  
10 conducted in violation of the Business and Professions Code, as set forth herein, demonstrate  
11 the necessity and legal basis for granting injunctive relief, ordering restitution to victims and  
12 imposing civil penalties requested by the People herein.

13 **FOURTH CAUSE OF ACTION**

14 **(INJUNCTION)**

15 61. Plaintiffs reallege and incorporate herein by this reference paragraphs 1  
16 through 48 as if fully set forth herein.

17 62. Plaintiffs are informed and believe and thereupon allege that the Sunroad  
18 Defendants are proceeding with the construction of the Sunroad Centrum I Building despite  
19 the City's Stop Work Notice issued to halt any further progress on any part of the building  
20 exceeding 160 feet AGL. Plaintiffs are informed and believe and thereupon allege that the  
21 Sunroad Defendants are also proceeding with pre-construction work for the other two, even  
22 taller, buildings referenced hereinabove. Sunroad's continued construction on the Sunroad  
23 Centrum I Building is in direct violation of the City's Stop Work Notice and is in direct  
24 violation of the DOT's notification that construction must not proceed without a validly  
25 issued DOT permit.

26 63. Plaintiffs are informed and believe that such flagrant acts by the Sunroad  
27 Defendants, and each of them, so gravely affects the public at large in that irreparable and  
28 permanent damage may be inflicted upon the citizens of the City as well as all of those who

1 utilize and rely upon the City's Montgomery Field that the immediate issuance of injunctive  
2 relief is appropriate and necessary.

3 64. Plaintiffs are informed and believe and thereupon allege that Plaintiffs have no  
4 adequate remedy at law for the injuries that could be suffered, other than the relief requested  
5 herein.

6 WHEREFORE, the Petitioners and Plaintiffs pray judgment against Respondents  
7 and Defendants, and each of them, as follows:

8 **FIRST CAUSE OF ACTION**  
9 **(PUBLIC NUISANCE)**

10 1. That the Sunroad Centrum I Building at 180 feet AGL be declared a public  
11 nuisance as a matter of law;

12 2. For a temporary restraining order, preliminary and permanent injunction  
13 ordering the Sunroad Defendants, and each of them, to cease construction of the Sunroad  
14 Centrum I Building until such time as the FAA, the DOT, and the City's DSD declares the  
15 plans for the construction of the building to be within Federal and State height restrictions and  
16 other applicable standards for buildings constructed at or near and airport, and more  
17 particularly, at or near the City's Montgomery Field airport;

18 3. For a mandatory injunction requiring Sunroad to deconstruct and remove any  
19 portion of the Sunroad Centrum I Building that is found to be a "hazard" to navigable  
20 airspace at or around Montgomery Field as determined by the FAA, the DOT, and the City's  
21 DSD.

22 4. For a temporary restraining order, preliminary and permanent injunction  
23 prohibiting the Sunroad Defendants, and any of them, from constructing any other building at  
24 or near Montgomery Field without first filing Notice with the FAA , obtaining a "No Hazard  
25 Determination" from the FAA, and/or without first obtaining all necessary permits required  
26 by the FAA, DOT or the City related to the construction of buildings at or near the City's  
27 Montgomery Field airport;

28 ///



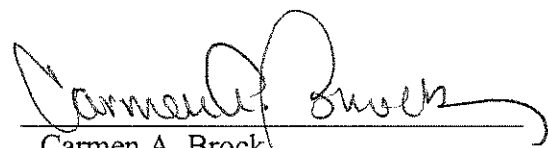


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- 4. For the cost of the suit, including attorneys fees as permitted by law;
- 5. For such other further relief and the Court may deem just and proper.

Dated: December 5, 2006

MICHAEL J. AGUIRRE, City Attorney

By   
Carmen A. Brock  
Deputy City Attorney

Attorneys for Petitioners and Plaintiffs  
The People of the State of California and  
The City of San Diego