

1 The People of the State of California ("People") and the City of San Diego, a charter
2 city and municipal corporation ("City"), by and through Michael Aguirre, the City's
3 independently elected City Attorney, herein allege:

4 **JURISDICTION AND VENUE**

5 1. At all times mentioned herein, the City has been, and is, a charter city
6 operating and existing as a municipal corporation, under the laws of the State. The City by the
7 powers vested in the City Attorney pursuant to Section 40 of the San Diego City Charter
8 ("Charter"), brings this action pursuant to California Civil Code §§ 3480, 3491 and 3494;
9 Government Code § 38773, 38773.1, 38773.5 and 50485.2; and San Diego Municipal Code
10 §§ 11.0210, 121.0302(b)(4) and 121.0314, to obtain a preliminary injunction, permanent
11 injunction, civil penalties, and other equitable relief as a result of Defendants SUNROAD
12 CENTRUM, L.P., a California Limited Partnership ("Sunroad Centrum"), SUNROAD
13 ASSET MANAGEMENT, INC., a California Corporation ("Sunroad Asset"), and
14 SUNROAD ENTERPRISES' (hereinafter collectively referred to as "Sunroad"), violations of
15 California law and the San Diego Municipal Code. The City also petitions the Court pursuant
16 to Code of Civil Procedure §1085 for an order compelling the California Department of
17 Transportation, Aeronautical Division ("DOT") to enforce the State Aeronautics Act (Pub.
18 Res. Code §21001 et seq.) as required by law.

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

23 3. More specifically, the People and the City (collectively "Plaintiffs") seek to
24 enjoin the Sunroad Defendants, and each of them, from continuing to construct a twelve (12)
25 story commercial office building ("Sunroad Centrum I Building") located 0.7 nautical miles
26 ("NM") from the City's Montgomery Field Airport ("Montgomery Field"). The Sunroad
27 Centrum I Building has been determined by the Federal Aviation Administration ("FAA") to
28 be a hazard to air navigation at Montgomery Field. As a hazard to air navigation, the Sunroad

1 Centrum I Building, not only poses a serious threat to the health and safety of the citizens of
2 the City and all who utilize Montgomery Field, the existence of a “hazard” at or near
3 Montgomery Field jeopardizes the City and County of San Diego’s (“County”) continued
4 receipt of millions of dollars of federal and state airport grant funds presently allocated to the
5 County for all airports within the County, including Montgomery Field.

6 4. At all times mentioned herein, the omission or commission of acts by the
7 Sunroad Defendants, and each of them, occurred within the territorial limits of the City.
8 Venue of this action in the County of San Diego is mandated, therefore, by California Code of
9 Civil Procedure §394.

10 BACKGROUND

11 5. The City is the owner and operator of Montgomery Field, a general civil
12 aviation airport within the City limits, located in the Kearny Mesa area of the City.
13 Montgomery Field is home base to approximately 600 aircraft and offers a 3400 foot lighted
14 runway served by an Instrument Landing System (“ILS”), a 3,400 foot parallel runway, and a
15 3,400 foot crosswind runway, monitored by a central air traffic control tower. Montgomery
16 Field is open to the public and presently operates 24 hours per day. Montgomery Field
17 shares its airspace with Marine Corps Air Station Miramar and San Diego International
18 Airport at Lindberg Field.

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

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

26 8. The Defendant Sunroad Enterprises (“Sunroad Enterprises”), is a real estate
27 development and investment company, whose business address is 445 East Gate Mall, Suite
28 400, San Diego, California 92121. The true nature of Sunroad Enterprise’s business status is

1 presently unknown to Plaintiffs. Plaintiffs are informed and believe and thereupon allege that
2 Sunroad Enterprises is the parent company, or holding company, for both Sunroad Centrum
3 and Sunroad Asset. Plaintiffs will amend this Complaint to allege Sunroad Enterprise's true
4 business status when such becomes known to Plaintiffs. Sunroad Centrum, Sunroad Asset,
5 and Sunroad Enterprises are hereinafter collectively referred to as "Sunroad."

6 9. The Respondent California Department of Transportation, Division of
7 Aeronautics ("DOT") is the State agency charged with the duty to foster and promote the
8 development of a safe, efficient, dependable, and environmentally compatible air
9 transportation system and to administer the provisions of the California Aeronautics Act,
10 Public Utilities Code ("PUC") § 21001 et seq. The DOT administers noise regulation and land
11 use planning laws that foster compatible land use around airports and encourages
12 environmental mitigation measures to lessen noise, air pollution, and other impacts caused by
13 aviation. The DOT is directly charged with the duty to protect persons and property on the
14 ground over which an air hazard is known to exist.

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

25 11. Plaintiffs are informed and believe, and thereupon allege, that at all times
26 herein mentioned each of the respondents or defendants was a parent company, associated
27 business entity, managing business entity, agent, employee or authorized representative of the
28 remaining defendants, and in doing the things hereinafter alleged, was acting within the

1 course and scope of such employment, or representative capacity.

2 12. Real Party In Interest Aircraft Owners and Pilots Association (“AOPA”), a
3 New Jersey non-profit corporation, is a national organization formed in 1939 whose current
4 membership includes more than 409,000 aircraft owners and pilots nationwide. AOPA is
5 organized for the benefit aircraft owners, pilots, and others with an interest in the preservation
6 and promotion of “general aviation” (that is, aviation operations other than scheduled
7 commercial air service or military aviation). AOPA is actively involved in government on a
8 national and local level to ensure general aviation access to airports, to preserve existing
9 airports, and to preserve and advance aviation infrastructure in communities across the United
10 States. There are more than 50,000 dues paying AOPA members in the State of California,
11 with 17,000 of those members the City and County of San Diego.

12 13. The City is informed and believes and thereupon alleges, that at least 550 of
13 the single engine aircraft, multiengine aircraft, jet aircraft, and helicopters, based at
14 Montgomery Field are owned and/or operated by AOPA members.

15 14. The AOPA and its local members, are indispensable parties to this action
16 because the claims and interests related to the subject matter of this litigation, and the
17 disposition of the action, will substantially affect the interests of all AOPA members, locally
18 and nationally. Any judgment rendered in this action without AOPA as a Real Party In
19 Interest would, therefore, have the potential to substantially impair or impede both the rights
20 of AOPA members, and the ability of AOPA to protect the interests of its members, locally
21 and nationally.

22 15. More specifically, the City is informed and believes that Montgomery Field is
23 included in the National Plan of Integrated Airport Systems, a group of more than 3,400
24 airports identified as being particularly significant to national air transportation, and hence of
25 vital interest to the AOPA. Montgomery Field is also designated a “reliever airport,” and is
26 one of only 274 airports with such status nationwide. As a “reliever airport,” Montgomery
27 Field is considered a specialized airport the FAA has encouraged be developed and preserved
28 in order to provide pilots alternatives to congested hub airports. As a “Reliever Airport,”

1 Montgomery Field and the safety issues surrounding Montgomery Field are of vital interest to
2 the AOPA and its members, locally and nationally.

3 16. Real Party In Interest, Community Airfields Association of San Diego,
4 Incorporated (“CAASD”) is a non-profit California corporation and community organization
5 dedicated to the support of the City’s Montgomery Field and Brown Field airports. CAASD
6 advocates on behalf of its members to encourage safe and economical aviation services and to
7 protect and insure the long-term viability of the City Montgomery Field and Brown Field
8 airports. CAASD is actively involved with the City’s Airports Advisory Committee (“AAC”) in
9 an effort to improve the development of the City’s two air fields and to engage the
10 community through community programs intended to make general aviation at the City’s
11 airports more accessible, affordable and beneficial to San Diego.

12 17. The City is informed and believes that CAASD currently has approximately
13 100 dues paying members, many of which are local pilots and aircraft owners who operate
14 aircraft at and from Montgomery Field.

15 18. CAASD and its members are indispensable parties to this action because the
16 claims and interests related to the subject matter of this litigation and the disposition of the
17 action will substantially affect the interests of CAASD and its members. Any judgment
18 rendered in this action without CAASD as a Real Party In Interest would, therefore, have the
19 potential to substantially impair or impede both the rights of CAASD and the ability of
20 CAASD to protect the interests of its members to ensure the safety and long term viability of
21 Montgomery Field.

22 19. 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 20. 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 21. 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 22. 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.

27 23. Title 14 of the Code of Federal Regulations, Chapter I (Federal Aviation
28 Administration, Department of Transportation) Subchapter E, Part 77 (Objects Affecting

1 Navigable Airspace) (hereinafter "Part 77"), establishes standards for determining
2 obstructions in navigable airspace, and sets forth reporting requirements for proposed
3 construction that would affect the navigable airspace at or near airports.

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

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

21 26. Plaintiffs are informed and believe and thereupon allege that on or about April
22 24, 2006, the FAA responded to Sunroad's Notice and issued Aeronautical Study No 2006-
23 AWP-638-OE notifying Sunroad the FAA had conducted an aeronautical study of the
24 Sunroad Centrum I Building in accordance with the provisions of 49 U.S.C.A. 44718 and Part
25 77 ("First FAA Determination"). The First FAA Determination found the Sunroad Centrum I
26 Building at 180 feet AGL exceeded FAA airport obstruction standards. The FAA concluded
27 the building would, therefore, have an adverse physical or electromagnetic interference effect
28 upon navigable airspace or on the navigation facilities located at Montgomery Field. The

1 FAA notified Sunroad that any height exceeding 160 feet AGL constituted a hazard. The
2 FAA therefore issued a "Notice of Presumed Hazard" to Sunroad. The FAA advised that
3 pending resolution of the building height issue, no construction of the Sunroad Centrum I
4 Building should proceed, not even at a reduced elevation.

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

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

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

1 that the maximum height of 160 feet AGL included the height of temporary construction
2 equipment, such as cranes used during the actual construction of the building. Sunroad was
3 informed the equipment must not exceed the overall height of 160 feet AGL without a
4 separate notice to the FAA. Despite the Second FAA Determination's warnings, Sunroad
5 proceeded to frame the building to its maximum planned height of 180 feet AGL, and to erect
6 construction cranes that exceeded 180 feet AGL without any notification to the FAA
7 whatsoever.

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

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

22 32. The Third FAA Determination also considered and analyzed the impact on
23 existing and proposed arrival, departure, and en route procedures for aircraft operating under
24 both visual flight rules and instrument flight rules at Montgomery Field. It studied the impact
25 on all existing and planned public use airports, military airports and aeronautical facilities in
26 the surrounding area, as well as the cumulative impact resulting from the studied obstruction
27 when combined with the impact of other existing or proposed structures in the vicinity. The
28 Third FAA Determination concluded the Sunroad Centrum I Building would have a

1 substantial adverse effect on air navigation at Montgomery Field and, in fact, constituted a
2 Hazard to air traffic. The FAA, therefore, issued an FAA Hazard Determination (“Hazard
3 Determination”). Sunroad did not appeal the FAA’s Hazard Determination. The FAA’s
4 Hazard Determination became final on September 20, 2006.

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

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

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

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

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

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

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

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

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

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

1 development agreement between Sunroad's predecessor in interest and the City. Sunroad
2 further asserted that the effect on Montgomery Field was "negligible" as the building only
3 protruded 17 feet into a 302 foot buffer zone of vertical clearance for the circling approach to
4 Runway 28R.

5 43. On October 27, 2006, the City issued a Stop Work Order for the Sunroad
6 Centrum I Building, ordering all work on the top 17 feet of the building cease until FAA
7 regulations were met.

8 44. On or about December 13, 2006, the City revised the Stop Work Order for the
9 Sunroad Centrum I Building, ordering all work on the top 20 feet of the building cease until
10 FAA regulations were satisfied.

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

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

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

26 48. On or about November 27, 2006, the DOT Aeronautics Division again
27 communicated with Sunroad Centrum, reaffirming the DOT's position that a permit was
28 necessary to allow further construction above 160 feet to continue, restating the DOT's goal

1 to reduce the height of the Sunroad Centrum I Building to a level not considered “hazardous”
2 by the FAA. Plaintiffs are informed and believe, and thereupon allege, that Sunroad has
3 steadfastly refused to halt construction of the Sunroad Centrum I Building, despite the clear
4 and present danger it poses to the health and welfare of the City, its citizens and all those who
5 rely upon and utilized the City’s Montgomery Field, and despite the DOT’s consistent
6 requests to Sunroad to comply with State and Federal law. Due to the imminent danger to the
7 public at large and all those who utilize Montgomery Field, the City Attorney has determined
8 the action taken by Plaintiffs herein is necessary to safeguard and protect the citizens of the
9 City and the financial interest of the City and its airports.

10 **FIRST CAUSE OF ACTION**

11 **(ABATEMENT OF PUBLIC NUISANCE)**

12 49. Plaintiffs reallege and incorporate herein by this reference paragraphs 1
13 through 48 as fully set forth herein.

14 50. Pursuant to the provisions of the California Airport Approaches Zoning Law
15 (Gov. Code §50485 et seq.), and more specifically, §50485.4 therein, where there is any
16 conflict in zoning, or other regulations applicable to height of structures around an airport, or
17 use of land around an airport, the more stringent regulation (in this case, Part 77 and PUC
18 §21659), shall govern and prevail over any other provision of law, including, but not limited
19 to, the City’s Municipal Code zoning regulations, if such conflict should exist.

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

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1 52. The Sunroad Centrum I Building also constitutes a “public nuisance” pursuant
2 to §§3480 and 3491 of the Civil Code, requiring abatement, because it is a “nuisance” that
3 affects the entire community, although the extent of the annoyance or damage inflicted upon
4 the individuals may be unequal.

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

11 54. Plaintiffs have no plan, speedy, or adequate remedy at law and, therefore,
12 seeks the aforementioned injunctive to abate the public nuisance as authorized by §§ 526 and
13 731 of the Code of Civil Procedure.

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

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

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1 **SECOND CAUSE OF ACTION**

2 **(WRIT OF MANDATE)**

3 57. Plaintiffs reallege and incorporate herein by this reference paragraphs 1
4 through 56 as if fully set forth herein.

5 58. 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 59. 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 60. 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.

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1 the future.

2 66. 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 67. 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 68. 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 69. Plaintiffs reallege and incorporate herein by this reference paragraphs 1
16 through 61 as if fully set forth herein.

17 70. Plaintiffs are informed and believe and thereupon allege that the Sunroad
18 Defendants are proceeding with the construction of the Sunroad Centrum I Building and work
19 that it knows, or should know, is in violation of the law and presents a distinct hazard to the
20 community at large, pilots who utilize Montgomery Field, and aircraft owners and users of
21 Montgomery Field, including those AOPA members and CAASD members mentioned
22 hereinabove.

23 71. Regardless of the issuance of the City's Stop Work Notice(s), Plaintiffs are
24 informed and believe substantial work is underway to complete the Sunroad Centrum I
25 Building, including completion of the roof which is above 160 feet AGL. Plaintiffs are
26 informed and believe Sunroad is proceeding under the guise of "weatherizing" the building
27 to mitigate losses that might be incurred by Sunroad. However, Plaintiffs are informed and
28 believe the acts of Sunroad to "weatherize" the building is nothing more than a thinly veiled

1 attempt to complete the Sunroad Centrum I Building unimpeded. Plaintiffs allege Sunroad
2 knows, or should know, that it must halt all work above 160 AGL on the Sunroad Centrum I
3 Building to comply with State and Federal law. Sunroad's construction of the Sunroad
4 Centrum I Building above 160 feet AGL is in direct violation of the FAA's warning that the
5 building constituted a hazard and is in direct violation of the DOT's notification that
6 construction must not proceed without a validly issued DOT permit.

7 72. Plaintiffs are informed and believe that such flagrant acts by the Sunroad
8 Defendants, and each of them, so gravely affects the public at large in that irreparable and
9 permanent damage may be inflicted upon the citizens of the City as well as Real Parties In
10 Interest herein, and all of those who utilize and rely upon the City's Montgomery Field, that
11 the immediate issuance of injunctive relief is appropriate and necessary.

12 73. Plaintiffs are informed and believe and thereupon allege that Plaintiffs have no
13 adequate remedy at law for the injuries that could be suffered, other than the relief requested
14 herein.

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

17 **FIRST CAUSE OF ACTION**

18 **(PUBLIC NUISANCE)**

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

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

27 3. For a mandatory injunction requiring Sunroad to deconstruct and remove any
28 portion of the Sunroad Centrum I Building that is found to be a "hazard" to navigable

1 airspace at or around Montgomery Field as determined by the FAA, the DOT, and the City's
2 DSD.

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

9 5. For the cost of the suit, including attorneys fees as permitted by law;

10 6. For such other further relief and the Court may deem just and proper.

11 **SECOND CAUSE OF ACTION**

12 **(WRIT OF MANDATE)**

13 1. For an alternative and peremptory writ of mandate ordering the Respondent
14 DOT comply with the State Aeronautics Act (Pub. Res. Code §21001 et seq.), and
15 commanding the DOT to exercise the authority vested in it pursuant to Public Utilities Code
16 §21253 to enforce, by injunction or other legal process, the State Aeronautics Act, including
17 §21659, and to take all actions necessary to ensure that the Sunroad Centrum I Building is
18 reduced to a height that is no longer deemed a "hazard" to navigable air space in and around
19 the City's Montgomery Field airport.

20 2. For an order commanding the DOT to take immediate action to exercise the
21 authority vested in it pursuant to Public Utilities Code §21253 to enforce, by injunction or
22 other legal process, any other act undertaken by Sunroad to construct any other building at or
23 near the City's Montgomery Field airport that is deemed a "hazard" by the FAA or in any
24 manner violates the State Aeronautics Act, including §21659 thereof.

25 3. For cost of suit;

26 4. For such other further relief and the Court may deem just and proper.

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1 **THIRD CAUSE OF ACTION**

2 **(UNFAIR PRACTICES ACT)**

3 1. For a temporary restraining order, preliminary and permanent injunction
4 ordering the Sunroad Defendants, and each of them, to cease construction of, and leasing of
5 space in the Sunroad Centrum I Building, or any other building in the New Century Center
6 Plan area where, pursuant to §17203 of the Business and Professions Code Sunroad's
7 engagement in these acts are found to violate the State's Unfair Practices Act.

8 2. For civil penalties of two-thousand-five hundred dollars (\$2,500) for each
9 violation of Business and Professions Code §17200 as determined by the Court;

10 3. That Plaintiffs recover costs of this suit including attorneys' fees and
11 investigation costs from the Sunroad Defendants and their successors and assigns;

12 4. That the proceeds obtained by the People be deposited with the appropriate
13 account(s) as required by law, and that the costs of this action, including attorneys' fees and
14 such other costs as the court shall deem proper be awarded to Plaintiffs;

15 5. That the People be awarded such other and further relief as the nature of the
16 case may require and as the Court deems proper to fully and successfully dissipate the effect
17 of the Sunroad Defendants' unlawful activities in violation of the Unfair Practices Act.

18 **FOURTH CAUSE OF ACTION**

19 **(INJUNCTION)**

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

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

1 DSD.

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

8 4. For the cost of the suit, including attorneys fees as permitted by law;

9 5. For such other further relief and the Court may deem just and proper.

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11 Dated: January 10, 2007

MICHAEL J. AGUIRRE, City Attorney

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By 

Carmen A. Brock
Deputy City Attorney

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

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