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SUNROAD CENTRUM, L.P., SUNROAD ASSET
MANAGEMENT, INC., and SUNROAD ENTERPRISES
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 CENTRAL DIVISION
11

12 THE PEOPLE OF THE STATE OF
CALIFORNIA and THE CITY OF SAN
13 DIEGO, a municipal corporation,

14 Plaintiffs,

15 v.

16 SUNROAD CENTRUM, L.P., a California
Limited Partnership, SUNROAD ASSET
17 MANAGEMENT, INC., a California
corporation, SUNROAD ENTERPRISES,
18 CALIFORNIA DEPARTMENT OF
TRANSPORTATION, AERONAUTICS
19 DIVISION, and DOES 1 through 50,
inclusive,

20 Defendants.

21 SUNROAD CENTRUM, L.P., a California
Limited Partnership, SUNROAD ASSET
22 MANAGEMENT, INC., a California
corporation, SUNROAD ENTERPRISES,
23

24 Cross-Complainants and
Petitioners,

25 v.

26 THE CITY OF SAN DIEGO, a municipal
corporation, and ROES 1 though 10,
inclusive,

27 Cross-Defendants and
Respondents.
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No. GIC 877054

**CROSS-COMPLAINT OF SUNROAD
CENTRUM, L.P., SUNROAD ASSET
MANAGEMENT, INC., AND SUNROAD
ENTERPRISES FOR EQUITABLE
ESTOPPEL, INVERSE CONDEMNATION,
AND PETITION FOR WRIT OF MANDATE**

1 AIRCRAFT OWNERS AND PILOTS
2 ASSOCIATION, INC., a New Jersey non-
3 profit corporation, and COMMUNITY
4 AIRFIELDS ASSOCIATION OF SAN
5 DIEGO, INC., a California non-profit
6 corporation

Real Parties In Interest.

7 Defendants, Cross-Complainants and Petitioners SUNROAD CENTRUM, L.P., a
8 California Limited Partnership, SUNROAD ASSET MANAGEMENT, INC., a California
9 corporation, and SUNROAD ENTERPRISES (collectively "Sunroad") hereby allege the
10 following:

11 1. Sunroad is developing and has substantially constructed a 300,000 square foot, 12
12 story office complex located at the northeast corner of Spectrum Center Boulevard and Kearny
13 Villa Road ("Sunroad Centrum Building" or "Building"). It is one of several planned office and
14 residential buildings in the Centrum 12 project, developed and owned by Sunroad (the "Centrum
15 Project"). The Building is the first high-rise Class A office building in Kearny Mesa and the
16 largest and only office project of this caliber in the mid-city San Diego area. The Building is
17 currently framed to its full height of 180 feet.

18 2. The Centrum Project was originally granted a Development Agreement by the City
19 in 1997 which was affirmed by subsequent amendment. The City approved the Centrum Project
20 in November 2002. The City approved Substantial Conformance Review for the Sunroad
21 Centrum Building on February 10, 2006 to a height of 180 feet. In good faith reliance on the
22 Development Agreement and Substantial Conformance Review, Sunroad thereafter began
23 construction of the Building.

24 3. On March 27, 2006, the City issued a framing and foundation permit for the
25 Building to a height of 180 feet. On July 7, 2006, the City granted Sunroad a building permit for
26 the Building which specified that the Building would be 180 feet tall. Sunroad relied in good
27 faith on the City issued permits and has framed and substantially constructed the Building to its
28 full 180 feet.

1 4. The Sunroad Centrum project is located within one mile of Montgomery Field, a
2 small 3-runway general aviation airport owned and operated by the City. At no time during the
3 permitting process did the City express any concern or reservation about the height of the
4 Building or the development. In fact, throughout this period the City, the owner and operator of
5 Montgomery Field, indicated to Sunroad that there were no height restrictions affecting the
6 Building.

7 5. The Centrum Project is located outside of all airport land use designated zones or
8 adjacent noise contours including: (1) the Compatibility Land Use Plan for Montgomery Field
9 (“CLUP”); (2) the Montgomery Field Airport Environs Overlay Zone (“AEOZ”); and (3) the
10 Kearny Mesa Community Plan, Airport Element – Montgomery Field (“KMCPAE”).
11 Consequently, the land use regulations applicable within these zones *do not* apply to the Centrum
12 Project. Furthermore, the City did not condition the Centrum Project’s entitlements or permits
13 upon Sunroad adhering to the laws and regulations of any of these zones nor to any review or
14 action by the Federal Aviation Administration (FAA). FAA regulations specifically disclaim
15 authority over land use which is controlled by the City.

16 6. On April 5, 2006, after receiving the framing and foundation permit, Sunroad filed
17 a notice of Proposed Construction with the FAA alerting the FAA of the Building and its
18 construction. Title 14 of the Code of Federal Aviation Regulations Part 77.25 establishes an
19 imaginary airport surface in the airspace above and around an airport. This imaginary plane, the
20 Horizontal Surface, extends 150 feet above the established airport elevation. Entities constructing
21 a building which may invade this Horizontal Surface are obligated to file a Notice of Construction
22 with the FAA, which Sunroad did.

23 7. On April 24, 2006, the FAA released a “Notice of Presumed Hazard” for the
24 Building. This notice concludes that the Building would eclipse the Horizontal Surface by 20
25 feet.

26 8. Sunroad also filed a notice for the use of a construction crane at the site. On June
27 27, 2006, the FAA issued a Notice to Airman (“NOTAM”) which raised flight minimums well
28 above the crane. The NOTAM modified flight procedures, placed pilots on notice of the crane

1 obstruction, and ensured that pilots emerging from the clouds on approach to Montgomery Field
2 (one mile east of the runway) would be well above the crane and more than 300 feet above the
3 180 foot fully permitted height of the Building. The City had notice of the NOTAM prior to its
4 issuance of the building permit on July 7, 2006.

5 9. In a letter dated June 20, 2006, Sunroad notified the FAA that it would temporarily
6 halt construction of the Building at 160 feet while Sunroad studied the effects of the April 24,
7 2006 FAA decision. On June 22, 2006, Sunroad submitted an FAA Form 7460-1 to the FAA
8 indicating that the Building's maximum height would be 160 feet.

9 10. On July 26, 2006, upon concluding its study, which showed the Building would
10 pose no threat to air traffic, Sunroad notified the FAA that it intended to construct the Building to
11 a height of 180 feet. That same day, Sunroad filed an FAA Form 7460-2 "Notice of Completion"
12 with the FAA. FAA regulations require a party to file a Form 7460-2 within 5 days of reaching a
13 building's maximum height. Sunroad constructed the Building using vertical steel members
14 which were approximately 20 feet in length. Therefore, the addition of a single vertical steel
15 member above 160 feet caused the building to reach its maximum height.

16 11. The FAA issued, on August 26, 2006, the Determination of Hazard to Air
17 Navigation. Because the FAA had already taken the procedures mandated by FAA
18 Circular 70/7460.2K, § 5a, namely, issuing a NOTAM for the construction crane used to build the
19 Building, the Building in fact posed no threat to public safety and does not constitute a nuisance.

20 12. On October 19, 2006, the City Attorney's office sent a letter to the City, requesting
21 the Department of Land Use and Economic Development issue a Stop Work Notice for the
22 Building.

23 13. On October 27, 2006, the City issued a Stop Work Order for the Building. The
24 Order required that construction be stopped on the top seventeen feet of the Building (later
25 amended to apply to the top 20 feet). At that time, the Building was already framed to its full
26 height.

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1 **14.** Sunroad appealed the Stop Work Order on November 28, 2006. On December 21,
2 2006, the City authorized Sunroad to continue limited construction on the top 20 feet of the
3 Building.

4 **15.** The City has now sued Sunroad alleging that the Centrum Building, which the
5 City permitted and approved, is a nuisance and danger to the public because of its height. The
6 City seeks an “abatement” of the alleged nuisance, an injunction against all further construction,
7 and an order “to deconstruct and remove any portion of the Sunroad Centrum I Building that is
8 found to be a ‘hazard.’”

9 **16.** The Building, in fact, poses no threat to public safety, is not a public nuisance, has
10 vested development rights (in favor of Sunroad), and should be allowed to proceed to completion.
11 Although the NOTAM has been reissued several times over the last seven months, the key
12 portion of the NOTAM remains in effect. Specifically, the NOTAM ensures that a pilot emerging
13 from the clouds on an approach to Montgomery Field will always be more than 300 feet above
14 the full 180 foot height of the Building.

15 **17.** Sunroad has proceeded in good faith reliance on the City’s Substantial
16 Conformance Review and issuance of permits. Sunroad has invested millions of dollars in the
17 development and construction of the Building. The Building is currently framed as approved by
18 the framing and foundation permit and building permit to its high point of 180 feet. Any further
19 construction will not increase the height of the Building.

20 **18.** Sunroad has already incurred damages, and faces substantial ongoing and future
21 economic losses should the construction suffer additional delays, be enjoined, or ordered abated.
22 In addition to the substantial cost to deconstruct and reconstruct the building, Sunroad has
23 suffered and will continue to suffer damages due to delay in completion and leasing of the
24 Building, permanent loss of value from portions of the Building required to be abated, as well as
25 stigma damages resulting from the City’s actions. The exact amount of such losses cannot be
26 determined at this time, but Sunroad conservatively expects that the losses exceed \$40 million.

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1 **FIRST CAUSE OF ACTION**

2 **CLAIM FOR EQUITABLE ESTOPPEL BASED ON VESTED RIGHTS**

3 19. Sunroad incorporates by reference the allegations set forth in paragraphs 1 through
4 18.

5 20. Sunroad has acquired all necessary permits for the development, construction and
6 use of the Building. The City has issued and approved a framing and foundation permit and a
7 building permit for a 180 foot Building.

8 21. In good faith reliance on the City's permits, Sunroad has spent millions of dollars
9 constructing the Building within the scope of those permits. The Building is now framed to its
10 full height. Sunroad's property interests in the Building have fully vested.

11 22. The City has limited Sunroad's ability to complete construction by its issuance of a
12 Stop Work Order, and the City now seeks to stop all present and future work on the Building as
13 well as an order requiring the deconstruction of portions of the Building. The City's existing Stop
14 Work Order and the requested litigation relief has caused and will continue to cause substantial
15 damage to Sunroad.

16 23. As a proximate result of the City's conduct, Sunroad has incurred damages and
17 will incur substantial ongoing and future economic losses which it is entitled to recovery in this
18 action.

19 24. The City should be estopped from taking any action to limit Sunroad from
20 performing work consistent with or in accordance with the building permit.

21 **SECOND CAUSE OF ACTION**

22 **CLAIM IN INVERSE CONDEMNATION**

23 25. Sunroad incorporates by reference the allegations set forth in paragraphs 1 through
24 24.

25 26. As stated above, Sunroad's property interest in the Building was vested, at the
26 latest, upon the City's issuance of the building permit.

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- 3. For reasonable costs, disbursements, and expenses pursuant to Code of Civil Procedure Section 1036, including attorneys' and appraiser fees, according to proof at trial;
- 4. For an alternative writ of mandate prohibiting the City from taking any action to limit the construction of the Building in accordance with the building permit;
- 5. For costs of suit herein incurred; and
- 6. For such other and further relief as the Court may deem just and proper.

Dated: February 9, 2007

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