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6 Attorneys for Defendants, Cross-Complainants, and Petitioners
 SUNROAD CENTRUM, L.P., SUNROAD ASSET
 7 MANAGEMENT, INC., and SUNROAD ENTERPRISES

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
 28 Respondents.

No. GIC 877054

**DECLARATION OF STEVEN M. STRAUSS
 IN SUPPORT OF DEFENDANTS' *EX PARTE*
 APPLICATION FOR ORDER TO ADVANCE
 TRIAL DATE AND GRANT PREFERENTIAL
 TRIAL SETTING**

Date: February 27, 2007
 Time: 8:30 a.m.
 Judge: Honorable John S. Meyer
 Dept. 61

Date Action Filed: December 15, 2006
 Trial Date: Not Yet Set

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
 7
 8 Real Parties In Interest.

I, Steven M. Strauss, declare as follows:

1. I am an attorney duly licensed to practice before the courts of the state of California and admitted to practice before this Court. I am a partner at the law firm of Cooley Godward Kronish LLP, attorneys of record for Defendants, Cross-Complainants and Petitioners Sunroad Centrum L.P., Sunroad Enterprises and Sunroad Asset Management, Inc. ("Sunroad"). I have personal knowledge of the matters set forth herein and, if called upon to do so, could and would testify competently thereto.

2. On February 26, 2007, prior to 10 a.m., this office notified all counsel of its intent to appear *ex parte* on February 27, 2007 at 8:30 a.m. for a court order to advance trial date and to grant preferential trial setting. Attached is a true and correct copy of the letter faxed to all counsel giving notice of this *ex parte* application. As of the time of this declaration, no party had indicated a desire to oppose this Application.

3. On December 15, 2006, the People of the State of California and the City of San Diego ("Plaintiffs") filed suit against Sunroad. On January 10, 2007, Plaintiffs filed a First Amended Complaint. The FAC alleges that the Sunroad Centrum Development and, specifically, the Centrum I Building (the "Building") is an "airport hazard" as determined by the Federal Aviation Association ("FAA") and therefore a threat to public safety. Plaintiffs allege the Building is a public nuisance because of this hazard determination. Plaintiffs request this nuisance be enjoined, via a temporary restraining order, preliminary restraining order and permanent injunction, and abated. Additionally, Plaintiffs allege that Sunroad undertook unfair, deceptive and misleading conduct in acquiring its building permits and entitlements and while advertising the Building. As a result of these unfair conduct allegations, the FAC seeks an

1 injunction, via a temporary restraining order, preliminary restraining order and permanent
2 injunction.

3 4. On February 9, 2007, Sunroad filed its Answer, denying Plaintiffs' allegations.
4 Additionally, Sunroad filed a cross-complaint for equitable estoppel and inverse condemnation
5 related to Plaintiffs' claims. Sunroad alleges that it has a vested property right in the Building
6 and any injunction or abatement of the Building would constitute a "taking" for public use
7 without just compensation.

8 5. On February 12, 2007, alleged Real Party In Interest Community Airfields
9 Association of San Diego ("CAASD") filed its Answer to the FAC alleging that the Building was
10 an "accident waiting to happen." See CAASD's Answer at ¶ 5.

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

18 7. On October 27, 2006, the City of San Diego ("City") issued a Stop Work Order for
19 the Building. The Order required that construction be stopped on the top seventeen feet of the
20 Building (later amended to apply to the top 20 feet) while an FAA regulation was clarified. At
21 that time, the Building was already framed to its full height. Sunroad appealed the Stop Work
22 Order on November 28, 2006. On December 21, 2006, the City authorized Sunroad to continue
23 limited construction on the top 20 feet of the Building.

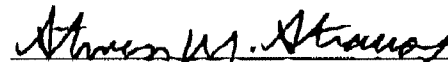
24 8. The Building was originally scheduled to be completed in or about June 2007.
25 The Stop Work Order is still in effect and prohibits some types of necessary construction on the
26 top 20 feet of the Building. Because of these prohibitions, the Building can not be completed
27 until the Stop Work Order is lifted by the City Development Services Department.

28 9. I am informed and believe that because of the lawsuit and Stop Work Order,

1 Sunroad is unable to lease space in the Building. Thus, Sunroad is incurring and will continue to
2 incur damages based on lost lease revenue.

3 10. I am informed and believe that the limits on construction on the top 20 feet of the
4 Building have led to increased construction costs for the whole building. For example, the FAA
5 recently denied Sunroad's External Load Congested Area Lift Plan. The Lift Plan requested that
6 helicopters be permitted to lift elevators to the roof of the Building for purposes of installation.
7 Installation and use of these elevators is necessary to continue construction of the Building as
8 permitted under the City's agreement or as not covered by the Stop Work Order. The FAA
9 denied the plan based in part on the "Stop Work Order" issued to Sunroad and the lawsuits
10 between Sunroad and the City of San Diego.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct except for those matters stated based on information and belief, and
13 for those matters, I am informed and believe them to be true. Executed this 26th day of February,
14 2007, at San Diego, California.

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17 Steven M. Strauss

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Cross-Complainants and
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THE CITY OF SAN DIEGO, a municipal
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No. GIC 877054

**DEFENDANTS' MEMORANDUM OF
 POINTS & AUTHORITIES IN SUPPORT OF
 EX PARTE APPLICATION FOR ORDER TO
 ADVANCE TRIAL DATE AND GRANT
 PREFERENTIAL TRIAL SETTING**

Date: February 27, 2007
 Time: 8:30 a.m.
 Judge: Honorable John S. Meyer
 Department: 61

Complaint Filed: December 15, 2006
 Trial Date: Not Yet Set

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 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.

6 **I. INTRODUCTION**

7 Sunroad Centrum L.P., Sunroad Asset Management, Inc., and Sunroad Enterprises
 8 ("Sunroad") bring an *Ex Parte* Application seeking an advanced trial date and preferential trial
 9 setting. Three separate bases exist for this priority status. First, section 1260.010 of the
 10 California Code of Civil Procedure ("CCP") grants priority for eminent domain actions over all
 11 other civil actions. Second, CCP 527(e) provides priority trial scheduling for actions seeking
 12 preliminary injunction as a remedy. Third, CCP 36(e) permit the court to award preferential trial
 13 scheduling in the interests of justice.

14 This lawsuit is, at its heart, a dispute about the safety of Sunroad's Centrum I Building
 15 ("the Building") located near Montgomery airfield. While Sunroad disputes the contention that
 16 the Building is a threat to public safety as alleged in ¶ 3 of the First Amended Complaint
 17 ("FAC"), it is in the immediate interest of all parties to resolve safety disputes at the earliest
 18 possible date. Furthermore, failure to expedite this matter will exacerbate the already enormous
 19 financial hardship on Sunroad. Sunroad has suffered and will continue to suffer damages due to
 20 increased construction expenses associated with delay in completing the Building and its inability
 21 to lease the Building while the complaint is pending. Now that all parties have appeared in this
 22 action, it is necessary, and in the best interests of justice, to advance this suit to trial as soon as
 23 possible.

24 **II. ARGUMENT**

25 **A. An Ex Parte Application For Advanced Trial Date Is Appropriate Under Cal.
 26 Rule Of Court 3.1335 On A Showing Of Good Cause**

27 A party may request an advance of the date set for trial by ex parte application. Cal. Rules
 28 of Court, rule 3.1335(a). An advance may be granted upon "an affirmative showing by the

1 moving party of good cause.” Cal. Rules of Court, rule 3.1335(b). Here, good cause exists based
2 on (1) statutory authority for preferential trial setting under CCP §§ 1260.010, 527(e), and 36(e)
3 and (2) facts demonstrating that any delay in bringing this action to trial will result in enormous
4 financial harm to Sunroad as well as the continuing existence of an alleged safety threat.

5 **B. CCP 1260.010 Provides Statutory Priority In Trial Setting For Eminent**
6 **Domain Claims.**

7 CCP 1260.010 grants eminent domain actions “precedence over all other civil actions in
8 the matter of setting the same for hearing or trial in order that such proceedings shall be quickly
9 heard and determined.” CCP 1260.010. “An inverse condemnation is an eminent domain lawsuit
10 initiated by one whose property was a taking or damaged for public use.” *CUNA Mutual Life Ins.*
11 *Co. v. Los Angeles County Metro. Transp. Auth.* (2003) 108 Cal. App. 4th 382, 389 n.7. On
12 February 9, 2007, Sunroad filed an inverse condemnation cross-complaint alleging that the City
13 has initiated a taking of Sunroad’s vested property rights without just compensation. By the plain
14 language of CCP 1260.010, this proceeding is entitled to priority trial setting. As such, Sunroad
15 urges the Court to set trial for this matter as soon as possible.

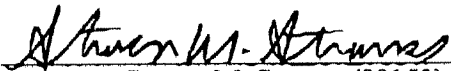
16 **C. C.C.P. 527(e) Provides Statutory Priority In Trial Setting for Preliminary**
17 **Injunction Claims.**

18 Under CCP 527(e), if a preliminary injunction “is at issue” then the matter “shall be set
19 for trial at the earliest possible date and shall take precedence over all other cases, except older
20 matters of the same character, and matters to which special precedence may be given by law.”
21 CCP 527(e). The language of the statute makes clear that a preliminary injunction need not be
22 granted or even sought for the statute to apply. A preliminary injunction must merely be “at
23 issue” to be granted trial preference. Plaintiffs’ First Amended Complaint (“FAC”), filed January
24 10, 2007, seeks a preliminary injunction for all but one cause of action See FAC, Prayer for
25 Judgment, First Cause of Action ¶¶ 2, 4; Third Cause of Action ¶ 1, Fourth Cause of Action ¶¶
26 1,3. Plaintiffs claim that a preliminary injunction is the appropriate remedy because the Building
27 is an immediate threat to public safety. FAC ¶ 3. Based on this allegation, it is in the best interest
28 of all parties to resolve this controversy at the earliest possible date.

1 Sunroad respectfully requests that the Court grant the instant Ex Parte Application and set trial for
2 late August, early September 2007, or at the earliest possible date thereafter.

3
4 Dated: February __, 2007

5 COOLEY GODWARD KRONISH LLP
6 STEVEN M. STRAUSS (99153)
7 PATRICK P. GUNN (172258)
8 DENNIS C. CROVELLA (190781)

9 By: 
10 Steven M. Strauss (99153)

11 Attorneys for Defendants SUNROAD
12 CENTRUM, L.P.; SUNROAD ASSET
13 MANAGEMENT, INC., and SUNROAD
14 ENTERPRISES

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

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15 THE PEOPLE OF THE STATE OF
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SUNROAD CENTRUM, L.P., a California
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 MANAGEMENT, INC., a California
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No. GIC 877054

**DEFENDANTS' *EX PARTE* APPLICATION
 FOR ORDER TO ADVANCE TRIAL DATE
 AND GRANT PREFERENTIAL TRIAL
 SETTING**

Date: February 27, 2007
 Time: 8:30 a.m.
 Judge: Honorable John S. Meyer
 Department: 61

Complaint Filed: December 15, 2006
 Trial Date: Not Yet Set

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 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

8 **PLEASE TAKE NOTICE** that on February 27, 2007 at 8:30 a.m., or as soon thereafter
 9 as the matter may be heard, in Department 61 of this Court, located at 330 West Broadway, San
 10 Diego, California, Sunroad Centrum L.P., Sunroad Asset Management, Inc., and Sunroad
 11 Enterprises ("Sunroad") will apply *ex parte*, pursuant to California Rule of Court ("CRC")
 12 3.1335, for a court order advancing trial date to the earliest possible date and granting preferential
 13 trial setting.

14 As set forth in the accompanying Memorandum of Points and Authorities in Support Of
 15 *Ex Parte* Application For Order To Advance Trial and Grant Preferential Trial Setting, an
 16 advance in trial date and preferential trial setting is necessary and appropriate in order to settle a
 17 question of public safety as soon as possible as well as to mitigate enormous financial losses to
 18 Sunroad. CRC 3.1334 entitles a party to an advance in trial date upon a showing of good cause.
 19 For the previously stated reasons (i.e. public safety and financial hardship) good cause exists.
 20 Three California statutes also provide good cause and entitle the parties to preferential trial
 21 setting. First, California Rule of Civil Procedure ("CCP") 1260.010 grants priority to all eminent
 22 domain action. The inverse condemnation claim in Sunroad's Cross-Complaint is such an
 23 eminent domain action. Second, CCP 527(e) grants trial preference to claims where a
 24 preliminary injunction is at issue. The First Amended Complaint prays for a preliminary
 25 injunction in all but one cause of action. Third, CCP 36(e) permits the Court to grant preferential
 26 trial setting to an action in the interests of justice. It is in the interest of justice to quickly settle a
 27 question of public safety and, in so doing, mitigate severe financial hardship to Sunroad.
 28

1 All parties have been notified of this *Ex Parte* Application pursuant California Rules of
 2 Court 3.1202 and 3.1204(a). No party indicated an intent to oppose the Application. Pursuant to
 3 Rule 3.1202(a), the names, addresses, and telephone numbers of the attorneys for the parties in
 4 this case area as follows:

5
 6 Counsel For Sunroad
 Steven M. Strauss
 Cooley Godward Kronish
 7 4401 Eastgate Mall
 San Diego, CA 92121
 8 Phone: 858-550-6000

9 Counsel For the People of the State Of California and The City of San Diego
 10 Michael J. Aguirre, Esq., City Attorney
 Carmen Brock, Deputy City Attorney
 11 Office of The City Attorney
 City of San Diego
 12 1200 Third Avenue, Suite 1620
 San Diego, CA 92101
 13 Phone: (619) 236-6666

14 Counsel for Community Airfields Association of San Diego, Inc.
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 15 Law Office of Gerald Blank
 444 West C Street, Suite 210,
 16 San Diego, California 92101
 Phone: 619-238-1111

17 Counsel for Aircraft Owners and Pilots Association, Inc.
 Jim Pokorny, Esq.
 18 Law Offices of James F. Pokorny
 110 W. C Street, Suite 1504
 19 San Diego, CA 92101
 20 Phone: 619-239-8142

21 Pursuant to Rule 3.1202(b) of the California Rules of Court, Sunroad informs the Court
 22 and all concerned parties that no previous *Ex Parte* has been filed in this suit.

23 This Application is based upon the accompanying Memorandum of Points and
 24 Authorities, the Declaration of Steven M. Strauss in Support of the *Ex Parte* Application, and on
 25 such other matters as the Court may consider at the hearing on this Application.

26
 27
 28

1 Dated: February __, 2007

2

COOLEY GODWARD KRONISH LLP
STEVEN M. STRAUSS (99153)
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3

4

5

By: Steven M. Strauss
Steven M. Strauss (99153)

6

7

Attorneys for Defendants SUNROAD
CENTRUM, L.P.; SUNROAD ASSET
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ENTERPRISES

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL DIVISION

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

Plaintiffs,

v.

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

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Cross-Complainants and Petitioners,

v.

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

Cross-Defendants and Respondents.

No. GIC 877054

[PROPOSED] ORDER GRANTING DEFENDANTS' *EX PARTE* APPLICATION FOR ORDER TO ADVANCE TRIAL DATE AND GRANT PREFERENTIAL TRIAL SETTING

Date: February 27, 2007
Time: 8:30 a.m.
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6 The *Ex Parte* Application of SUNROAD CENTRUM L.P., SUNROAD ASSET
 7 MANAGEMENT, INC., and SUNROAD ENTERPRISES for an order advancing the trial date
 8 and granting preferential trial setting came on for hearing before this Department on February 27,
 9 2007 at 8:30 a.m. Upon consideration of the *Ex Parte* Application, all related papers and oral
 10 argument, and good cause having been shown:

11 **IT IS HEREBY ORDERED THAT:**

12 The trial date be advanced pursuant to section 3.1335 of the California Rules of Court and
 13 preferential trial setting be granted pursuant to California Code of Civil Procedure §§ 1260.010,
 14 527(e), and 36(e).

- 16 1. The trial date in this action shall be _____ at
 17 _____ a.m. in Department 61 of the above-captioned court.
- 18 2. The trial readiness conference in this matter shall be on _____ at
 19 _____ a.m.
- 20 3. The Law And Motion Cut-off shall be on _____.
- 21 4. The first designation of experts shall be on _____, and
 22 the second designation of experts shall be on _____.
- 23 5. The Discovery Cut-off shall be on _____.

24 Dated: _____

25 _____
 26 JUDGE OF THE SUPERIOR COURT

27
 28

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11 Phone: 858-550-6000

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13 Michael J. Aguirre, Esq., City Attorney
14 Carmen Brock, Deputy City Attorney
15 Office of The City Attorney
16 City of San Diego
17 1200 Third Avenue, Suite 1620
18 San Diego, CA 92101
19 Phone: (619) 236-6666

20 Counsel for Community Airfields Association of San Diego, Inc.
21 Gerald Blank, Esq
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Bruce A. Behrens, Chief Counsel
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4050 Taylor Street, MS 130
San Diego, CA 92110-2737

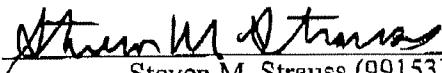
24 Pursuant to Rule 3.1202(b) of the California Rules of Court, Sunroad informs the Court
25 and all concerned parties that no previous *Ex Parte* has been filed in this suit.

26 This Application is based upon the accompanying Memorandum of Points and
27 Authorities, the Declaration of Steven M. Strauss in Support of the *Ex Parte* Application, and on
28 such other matters as the Court may consider at the hearing on this Application.

1 Dated: February 26 2007

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By: 
Steven M. Strauss (99153)

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MANAGEMENT, INC., and SUNROAD
ENTERPRISES