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May 20, 2007

Honorable Jerry Sanders  
Mayor, City of San Diego  
City Administration Building  
202 C Street  
San Diego, California 92101

re: An open letter - The Sunroad Building mess - that's the best way to put it

Dear Mayor Sanders:

Thank you for accepting responsibility for the City's shortcomings in the Sunroad building mess. But, the cure is equally important, along with the everlasting message it will send. As attorney for the Community Airfields Association of San Diego, a California non-profit corporation which represents pilots and others concerned with the City's two airports, and as a business and pleasure pilot for more than thirty years, with an aircraft based at Montgomery Field, I am writing to offer what might be a unique perspective. I have attended many of the depositions in the ongoing litigation, and have heard and read things I am sure you and the public are not yet aware of. I also want to comment on some of your proposed solutions.

You've "encouraged" the FAA to consider the proposal in your letter of May 18, 2007. But, do you know moving the aviation circling pattern to the south of the airport puts it right over residential communities and schools, rather than where it is now - over largely commercial areas? Do you know that pattern is only flown very low and in bad weather? As an instrument rated pilot, I can tell you that is a tough approach to fly, north or south, and the risks should not be spread elsewhere to appease a developer or the FAA. Is spreading that risk over homes and schools really what you want? Is that okay with the affected communities and citizens of San Diego? Even absent the FAA, that's just not right.

Even if it is okay (and I am sure that's not true) why would you do this to accommodate a developer who intentionally ignored a federal warning? Here's what you said at your press conference: "Sunroad knew of the FAA's admonitions last summer and intentionally ignored their direction to limit the building's height to 160 feet. We are a society of laws, and Sunroad - just like everyone else - must comply with the law." (Actually, Sunroad received the first definitive warning letter from the FAA in April, 2006, not last summer. There was plenty of warning. In 2005, Sunroad was required to notify the FAA before seeking a building permit in the first place, and failed to do so. You said the FAA's notice was "very clear," in saying the building would be a safety hazard at 180 feet.) When you were in law enforcement you never said to a bank robber, "put back 90% of what you stole, and don't do it again." Of course not. Why are you doing the equivalent now? Why should Sunroad keep some what it obtained by refusing to follow the law? You proposed that part of the building remain at 180 feet. Why? (To be clear, I don't believe it is because Sunroad employee's contributed to your campaign. I do think you lack expertise and full information on this mess.)

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Sunroad's architect recently testified at a deposition. He admitted they failed to notify the FAA because they didn't know of the requirement. "We do now," he said. He also said Sunroad's originally planned low buildings on the old General Dynamics site became the presently proposed three high-rise buildings as a result of Sunroad's "profit" motive in selling off most of the site to residential developers and leaving much less land for office buildings. Sell off land, and build taller buildings on the remainder was the solution. How can you condone that by proposing to the FAA that the building remain at 163 feet, with a portion at 180 feet? The federal limit, for public safety purposes, is 160 feet. You said public safety is first. Who owns and runs this city? The strong mayor, or the developers? What message will you send to those who would consider pushing and exceeding the limits in the future?

Deceptively, Sunroad told the FAA it would change plans and keep the building at 160 feet. Several City officials have confirmed this, and Sunroad twice wrote the same thing to the FAA. Just last week, former Deputy City Attorney David Miller, who was working on this issue in the City Attorney's Office, signed a statement under penalty of perjury in the litigation saying that when the issue arose the building was "under 160 feet, the FAA maximum." He also said, "Sunroad's attorney agreed to halt construction while they worked out details with the FAA." Then, he wrote, "following this, prior to obtaining approval for the final height of 180 feet from the FAA, Sunroad continued construction of the building, though their attorney had assured me that construction would stop at 160 feet until the issue was resolved with the FAA." At an open meeting of the City's Airports Advisory Committee, before about 80 people, Sunroad's Vice President, Tom Story, was asked about this. He replied, point blank, that Sunroad didn't ask for further permission from the FAA, "because we knew they would say no." Now, you want to award this deceptive, profit driven conduct by allowing Sunroad to keep some of what it gained! That's hard to believe.

Jim Waring, your hand-picked Deputy Chief for Land Use and Economic Development, wrote to the California Department of Transportation, Division of Aeronautics, on January 23, 2007. In part he said, "We have never received a satisfactory answer to the question of why Sunroad agreed with the FAA in the Spring of 2006 to stop at 160 feet and then proceeded to 180 feet." That was true when Jim Waring wrote it, and it remains true today. Why? Because there is no "satisfactory" explanation. Sunroad claims it did its own safety study and determined the building would not be a hazard. It never took that study to the FAA. That's like telling a police officer you were speeding because your own study said it was safe to do so. What about the law? Deceptive and underhanded practices, profit motives, and disregard for public safety are explanations, but they are never satisfactory. Please don't endorse that conduct with a reward to Sunroad in the form of a proposed accommodation. Make them do what is right - do what they promised to do - do what the law required them to do in the first place - bring the entire building into conformance - now - before a tragedy occurs.

It is revealing that of roughly 6,000 warnings issued by the FAA about construction near airports in 2006, all but 30 decided to work with the FAA and comply with its safety requirements. 29 appealed. Some won; most lost. Just one did neither: Sunroad. It just defied the federal government, and tried to trick your administration and take advantage of San Diego's citizens. It has been caught. The City should now stand shoulder-to-shoulder with the FAA and say "no" means "no," profit never wins over public safety. No appeasement. No accommodation. No mercy. Don't mess with this City.

What can you do? You said at your press conference "my job is to fix the mistake." Here's how. First, your new order to stop work on the top 20 feet of the building is too little, too late. Deposition testimony establishes the building's shell is 100% complete. There is no more work to be done on those top floors.

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Do what the City Attorney wrote and asked you to do on October 19, 2006: order a halt to work on the entire building. (Sunroad simply ignored the City's Attorney's more recent letter directly ordering it to do so.) Stopping work on the entire building protects the construction workers who are unwilling participants in Sunroad's devious scheme. They'll now be working to finish the interior if you don't take "strong Mayor" action. It also recognizes the inevitability that the building will be deconstructed into conformance, something your Department of Development Services (DSD) officials and Sunroad's architect testified can be done. (Your proposal to the FAA makes it apparent you've been told it can be done. A DSD official testified it is not uncommon.)

Second, since Sunroad has earned it, order DSD not to issue Sunroad or its related entities any permits for anything, anywhere, in the City until this building complies with the law. Law breakers earn punishment. Sunroad, at a minimum, has earned this.

Third, please appoint a panel of knowledgeable people who understand the complex aviation and legal issues, and have a grasp of all of the facts. They can report and keep you accurately and fully informed. There are plenty of volunteers out there. Just ask. Understandably you and many City officials lack expertise in this area. As you've done with other issues, get the expert input.

Lastly, the City may have made some mistakes, that I am confident you'll assure won't be repeated. But, this is Sunroad's fault. It knowingly violated the law. Any "resolution" must include full compensation to the City for all of its attorney fees and expenses incurred in responding, in the litigation and otherwise. Our cash-strapped City shouldn't have been put to that expense. Developers should understand, through the message you send, that this won't be tolerated. Period.

Respectfully,

Original document signed by Gerald Blank

Gerald Blank  
Counsel for Community Airfields Association of San Diego, Inc.  
A California non-profit corporation, and real party in interest in  
the pending litigation by the City against Sunroad