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**BEFORE THE CITY OF SAN DIEGO  
ETHICS COMMISSION**

In re the Matter of: ) Case No.: 2008-54  
)  
) **ADMINISTRATIVE ENFORCEMENT**  
12 NANCY GRAHAM, ) **ORDER**  
)  
13 Respondent. ) [SDMC § 26.0439]  
)  
) **Date:** May 20, 2010  
15 ) **Time:** 9:00 a.m.  
) **Location:** 202 C Street, 12th Floor  
16 ) San Diego, CA 92101

Pursuant to San Diego Municipal Code [SDMC] section 26.0436 *et seq.*, the City of San Diego Ethics Commission appointed an ad hoc subcommittee composed of Commissioners Lee Biddle, Clyde Fuller, and Larry Westfall to serve as the Presiding Authority in the matter of Nancy Graham [Respondent], Ethics Commission Case No. 2008-54. The Presiding Authority bifurcated the hearing into two parts. The first, concerning legal issues, was considered by the Presiding Authority following the submission of briefs submitted by the parties. In accordance with SDMC sections 26.0437 and 26.0438, the Presiding Authority issued a Recommendation concerning the bifurcated legal issues on May 12, 2010, and the Ethics Commission deliberated in open session on May 13, 2010. As reflected in the minutes from the Ethics Commission meeting on May 13, 2010, the Ethics Commission determined that, when a City Official has received income from a business entity, the City Official’s economic interests for purposes of SDMC section 27.3561, include the business entity as well as any “affiliated entities” of the

1 business entity in accordance with the criteria delineated in FPPC Regulations 18703.1 and  
2 18703.3.

3 The second portion of the Administrative hearing was held on May 20, 2010, at which  
4 time the Presiding Authority heard testimony and reviewed evidence relating to the allegations  
5 in the Final Administrative Complaint [Administrative Complaint] brought by Petitioner against  
6 Respondent. In accordance with SDMC sections 26.0437 and 26.0438, the Presiding Authority  
7 issued a Recommendation on July 20, 2010, and the Ethics Commission deliberated in open  
8 session on August 12, 2010.

9 The Administrative Complaint alleges that Respondent violated the conflict of interest  
10 provisions of the Ethics Ordinance (SDMC section 27.3561) as the former President and Chief  
11 Operating Officer of the Centre City Development Corporation [CCDC]. After deliberating  
12 pursuant to SDMC section 26.0438 with regard to each violation alleged by Petitioner in the  
13 Administrative Complaint, and based on findings of fact, conclusions of law, and the entire  
14 record of the proceedings, the Ethics Commission found by the concurring votes of at least four  
15 Commissioners as set forth in the Ethics Commission Resolution dated August 16, 2010, that  
16 Petitioner established by a preponderance of the evidence that Respondent violated the Ethics  
17 Ordinance as set forth below.

18 Further, for each finding of a violation of the Ethics Ordinance, the Ethics Commission  
19 voted on the penalty to be imposed in consideration of all of the relevant circumstances,  
20 including, but not limited to: (1) the severity of the violation; (2) the presence or absence of any  
21 intention to conceal, deceive, or mislead; (3) whether the violation was deliberate, negligent, or  
22 inadvertent; (4) whether the Respondent demonstrated good faith by consulting the Commission  
23 staff for written advice that does not constitute a complete defense; (5) whether the violation  
24 was an isolated incident or part of a pattern, (6) whether the violator has a prior record of  
25 violations of Governmental Ethics Laws; (7) the existence of any Mitigating Information; and  
26 (8) the degree to which the Respondent cooperated with Commission staff by providing full  
27 disclosure, remedying a violation, or assisting with the investigation. SDMC §26.0438(f).  
28 Based on the concurring votes of at least five Commissioners as set forth in the Ethics

1 Commission Resolution dated August 16, 2010, the Ethics Commission imposed the penalties  
2 on Respondent set forth below for her violations of the Ethics Ordinance.

3 **Counts 7, 8, 9, 10, 12, 13, 14, 15, 24, and 25 – Violations of SDMC section 27.3561**

4 SDMC section 27.3561 prohibits City Officials from participating in municipal  
5 decisions if it is reasonably foreseeable that the decision will have a material financial effect on  
6 the City Official or one of the City Official's economic interests, including sources of income of  
7 \$500 or more within the prior twelve month period.

8 The Ethics Commission finds that Respondent committed ten violations of SDMC  
9 section 27.3561 by participating in meetings with CCDC staff and/or CCDC board members  
10 and/or other City Officials and/or representatives of Ballpark Village LLC, during which she  
11 attempted to influence decisions concerning the Ballpark Village project when it was reasonably  
12 foreseeable that the decisions would have a material financial effect on Lennar Homes of  
13 California, one of the developers of Ballpark Village and one of Respondent's economic  
14 interests. The Ethics Commission's specific findings and imposition of penalties on Counts 7,  
15 8, 9, 10, 12, 13, 14, 15, 24, and 25 are as follows:

16 **Count 7** – Respondent participated in a meeting on July 23, 2007, during which she  
17 attempted to influence decisions concerning the Ballpark Village project when it was reasonably  
18 foreseeable that the decisions would have a material financial effect on Lennar Homes of  
19 California, one of her economic interests. Respondent is ordered to pay a penalty in the amount  
20 of \$1,500.00 for Count 7.

21 **Count 8** – Respondent participated in a meeting on August 2, 2007, during which she  
22 attempted to influence decisions concerning the Ballpark Village project when it was reasonably  
23 foreseeable that the decisions would have a material financial effect on Lennar Homes of  
24 California, one of her economic interests. Respondent is ordered to pay a penalty in the amount  
25 of \$1,500.00 for Count 8.

26 **Count 9** – Respondent participated in a meeting on September 5, 2007, during which  
27 she attempted to influence decisions concerning the Ballpark Village project when it was  
28 reasonably foreseeable that the decisions would have a material financial effect on Lennar

1 Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in  
2 the amount of \$1,500.00 for Count 9.

3 **Count 10** – Respondent participated in a meeting on September 17, 2007, during which  
4 she attempted to influence decisions concerning the Ballpark Village project when it was  
5 reasonably foreseeable that the decisions would have a material financial effect on Lennar  
6 Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in  
7 the amount of \$1,500.00 for Count 10.

8 **Count 12** – Respondent participated in a meeting on October 5, 2007, during which she  
9 attempted to influence decisions concerning the Ballpark Village project when it was reasonably  
10 foreseeable that the decisions would have a material financial effect on Lennar Homes of  
11 California, one of her economic interests. Respondent is ordered to pay a penalty in the amount  
12 of \$1,500.00 for Count 12.

13 **Count 13** – Respondent participated in a meeting on October 17, 2007, during which  
14 she attempted to influence decisions concerning the Ballpark Village project when it was  
15 reasonably foreseeable that the decisions would have a material financial effect on Lennar  
16 Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in  
17 the amount of \$1,500.00 for Count 13.

18 **Count 14** – Respondent participated in a meeting on January 23, 2008, during which she  
19 attempted to influence decisions concerning the Ballpark Village project when it was reasonably  
20 foreseeable that the decisions would have a material financial effect on Lennar Homes of  
21 California, one of her economic interests. Respondent is ordered to pay a penalty in the amount  
22 of \$1,500.00 for Count 14.

23 **Count 15** – Respondent participated in a meeting on January 31, 2008, during which she  
24 attempted to influence decisions concerning the Ballpark Village project when it was reasonably  
25 foreseeable that the decisions would have a material financial effect on Lennar Homes of  
26 California, one of her economic interests. Respondent is ordered to pay a penalty in the amount  
27 of \$1,500.00 for Count 15.

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1           **Count 24** – Respondent participated in a meeting on May 16, 2008, during which she  
2 attempted to influence decisions concerning the Ballpark Village project when it was reasonably  
3 foreseeable that the decisions would have a material financial effect on Lennar Homes of  
4 California, one of her economic interests. Respondent is ordered to pay a penalty in the amount  
5 of \$1,500.00 for Count 24.

6           **Count 25** – Respondent participated in a second meeting on May 16, 2008, during  
7 which she attempted to influence decisions concerning the Ballpark Village project when it was  
8 reasonably foreseeable that the decisions would have a material financial effect on Lennar  
9 Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in  
10 the amount of \$1,500.00 for Count 25.

11                           **Counts 26 through 31 – Violations of SDMC section 27.3561**

12           SDMC section 27.3561 prohibits City Officials from participating in municipal  
13 decisions if it is reasonably foreseeable that the decision will have a material financial effect on  
14 the City Official or one of the City Official’s economic interests, including sources of income of  
15 \$500 or more within the prior twelve month period.

16           The Ethics Commission finds that Respondent committed six violations of SDMC  
17 section 27.3561 by engaging in email communications with CCDC staff and/or other City  
18 Officials and/or representatives of Ballpark Village LLC in which she attempted to influence  
19 decisions concerning the Ballpark Village project when it was reasonably foreseeable that the  
20 decisions would have a material financial effect on Lennar Homes of California, one of the  
21 developers of Ballpark Village and one of Respondent’s economic interests. The Ethics  
22 Commission’s specific findings and imposition of penalties on Counts 26 through 31 are as  
23 follows:

24           **Count 26** – Respondent engaged in an email communication on April 23, 2007, in  
25 which she attempted to influence decisions concerning the Ballpark Village project when it was  
26 reasonably foreseeable that the decisions would have a material financial effect on Lennar  
27 Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in  
28 the amount of \$1,500.00 for Count 26.

1           **Count 27** – Respondent engaged in an email communication on April 24, 2007, in  
2 which she attempted to influence decisions concerning the Ballpark Village project when it was  
3 reasonably foreseeable that the decisions would have a material financial effect on Lennar  
4 Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in  
5 the amount of \$1,500.00 for Count 27.

6           **Count 28** – Respondent engaged in an email communication on June 26, 2007, in which  
7 she attempted to influence decisions concerning the Ballpark Village project when it was  
8 reasonably foreseeable that the decisions would have a material financial effect on Lennar  
9 Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in  
10 the amount of \$1,500.00 for Count 28.

11           **Count 29** – Respondent engaged in an email communication on August 28, 2007, in  
12 which she attempted to influence decisions concerning the Ballpark Village project when it was  
13 reasonably foreseeable that the decisions would have a material financial effect on Lennar  
14 Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in  
15 the amount of \$1,500.00 for Count 29.

16           **Count 30** – Respondent engaged in an email communication on October 10, 2007, in  
17 which she attempted to influence decisions concerning the Ballpark Village project when it was  
18 reasonably foreseeable that the decisions would have a material financial effect on Lennar  
19 Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in  
20 the amount of \$1,500.00 for Count 30.

21           **Count 31** – Respondent engaged in an email communication on May 15 and 16, 2008,  
22 in which she attempted to influence decisions concerning the Ballpark Village project when it  
23 was reasonably foreseeable that the decisions would have a material financial effect on Lennar  
24 Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in  
25 the amount of \$1,500.00 for Count 31.

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1 **Counts 33 and 34 – Violations of SDMC section 27.3561**

2 SDMC section 27.3561 prohibits City Officials from participating in municipal  
3 decisions if it is reasonably foreseeable that the decision will have a material financial effect on  
4 the City Official or one of the City Official’s economic interests, including sources of income of  
5 \$500 or more within the prior twelve month period.

6 The Ethics Commission finds that Respondent committed two violations of SDMC  
7 section 27.3561 by participating in CCDC meetings concerning the Ballpark Village project  
8 when it was reasonably foreseeable that the decisions would have a material financial effect on  
9 Lennar Homes of California, one of the developers of Ballpark Village and one of Respondent’s  
10 economic interests. The Ethics Commission’s specific findings and imposition of penalties on  
11 Counts 33 and 34 are as follows:

12 **Count 33** – Respondent participated in the discussion concerning the Ballpark Village  
13 project at the meeting of the CCDC board sitting as the Real Estate Committee on July 11,  
14 2007. In so doing, Respondent attempted to influence CCDC decisions concerning Ballpark  
15 Village when it was reasonably foreseeable that the decisions would have a material financial  
16 effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to  
17 pay a penalty in the amount of \$4,000.00 for Count 33.

18 **Count 34** – Respondent participated in the discussion concerning the Ballpark Village  
19 project at the meeting of the CCDC board sitting as the Real Estate Committee on May 14,  
20 2008. In so doing, Respondent attempted to influence CCDC decisions concerning Ballpark  
21 Village when it was reasonably foreseeable that the decisions would have a material financial  
22 effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to  
23 pay a penalty in the amount of \$4,000.00 for Count 34.

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1           Based on the findings set forth above and pursuant to SDMC section 26.0438, the Ethics  
2 Commission orders that Respondent pay a monetary penalty in the amount of \$32,000 to the  
3 General Fund of the City of San Diego in accordance with the provisions of SDMC sections  
4 26.0439(b)(3) and 26.0440, within 30 days of the date this Order is served on Respondent.

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6 **IT IS SO ORDERED.**

7 Dated: August 16, 2010

CITY OF SAN DIEGO ETHICS COMMISSION

8  
9 By \_\_\_\_\_  
Larry Westfall, Chair

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