

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO</p> <p>Court Address: 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521</p>		
<p>Plaintiffs: GREENBRIAR PAIRED UNITS HOMEOWNERS ASSOCIATION, INC., a Colorado non-profit corporation, and GREENBRIAR SECOND SUBDIVISION TOWNHOME ASSOCIATION, INC., a Colorado non-profit corporation.</p> <p>Defendants: KB HOME COLORADO, INC., a Colorado corporation; BROCK CHAPMAN, individually as a former member of the Greenbriar Paired Units Homeowners Association, Inc. and the Greenbriar Second Subdivision Townhome Association, Inc. Boards of Directors; DAVID SILER, individually as a former member of the Greenbriar Paired Units Homeowners Association, Inc. and the Greenbriar Second Subdivision Townhome Association, Inc. Boards of Directors; and MICHELLE LEE, individually as a former member of the Greenbriar Paired Units Homeowners Association, Inc. and the Greenbriar Second Subdivision Townhome Association, Inc. Boards of Directors.</p>		<p>▲ COURT USE ONLY ▲</p>
<p>Attorney: Benson & Associates, PC Name: Douglas W. Benson Heidi E. Storz Address: 1301 Washington Ave, Ste. 300 Golden, CO 80401 Tel. No.: 720-898-9680 Fax No.: 720-898-9681 E-mail: doug@bensonpc.com hstorz@bensonpc.com Atty. Reg. No.: 29630 (DWB); 30567 (HES)</p>		<p>Case No.: <u>2007 CV 31</u> Div 5C</p>
<p>COMPLAINT AND JURY DEMAND</p>		

NOW COME Plaintiffs, Greenbriar Paired Units Homeowners Association, Inc. and Greenbriar Second Subdivision Townhome Association, Inc., by and through their attorneys, and hereby file their Complaint against Defendants as follows.

PARTIES AND VENUE

1. Plaintiff, Greenbriar Paired Units Homeowners Association, Inc. (“Paired Units Association”), is incorporated as a Colorado non-profit corporation. Plaintiff is a homeowners association organized under the Colorado Common Interest Ownership Act, §§ 38-33.3-101 to -319, C.R.S. (2000).

2. Plaintiff, Greenbriar Second Subdivision Townhome Association, Inc. (“Townhome Association”), is incorporated as a Colorado non-profit corporation. Plaintiff is a homeowners association organized under the Colorado Common Interest Ownership Act, §§ 38-33.3-101 to -319, C.R.S. (2000).

3. The residential development hereinafter referred to as “Greenbriar Paired Units” is described in the recorded Declaration of Covenants, Conditions, Restrictions, and Easements for Paired Units Association, including all amendments thereto.

4. The residential development hereinafter referred to as “Greenbriar Townhomes” is described in the recorded Declaration of Covenants, Conditions, Restrictions, and Easements for Townhome Association, including all amendments thereto.

5. Paired Units Association is composed of the owners of all of the homes at Paired Units Association. The Paired Units Association also maintains additional real property consisting of the common elements and limited common elements of the project for the use and benefit of all its members. The individual units together with this additional real property form a common interest community as defined by § 38-33.3-103, C.R.S. (2000).

6. Townhome Association is composed of the owners of all of the homes at Townhome Association. The Townhome Association also maintains additional real property consisting of the common elements and limited common elements of the project for the use and benefit of all its members. The individual units together with this additional real property form a common interest community as defined by § 38-33.3-103, C.R.S. (2000).

7. Defendant KB Home Colorado, Inc. (hereinafter “KB Home”) is a Colorado corporation which has conducted and is conducting business in Loveland, Colorado. KB Home was the declarant, developer, and builder-vendor of both the Paired Units Association and the Townhome Association.

8. Defendant Brock Chapman was appointed by the declarant to the Paired Units Association’s and the Townhome Association’s initial boards of directors. Upon information and belief, Brock Chapman was a declarant and/or an affiliate of the declarant as defined by the declaration and § 38-33.3-103, C.R.S.

9. Defendant David Siler was appointed by the declarant to the Paired Units Association's and the Townhome Association's initial boards of directors. Upon information and belief, David Siler was a declarant and/or an affiliate of the declarant as defined by the declaration and § 38-33.3-103, C.R.S.

10. Defendant Michelle Lee was appointed by the declarant to the Paired Units Association's and the Townhome Association's initial boards of directors. Upon information and belief, Michelle Lee was a declarant and/or an affiliate of the declarant as defined by the declaration and § 38-33.3-103, C.R.S.

11. Association has the general authority and responsibility to bring this action on behalf of all homeowners pursuant to § 38-33.3-302(1)(d), C.R.S.

12. Venue is proper in Larimer County pursuant to C.R.C.P. 98, as Defendants are residents who have conducted and are conducting business within Larimer County.

GENERAL ALLEGATIONS

13. The Paired Units Association and the Townhome Association have been seeking to address complaints of property damage from various construction defects throughout their communities. The damage primarily relates to improper siding installation and site drainage but also includes, by way of example, leaking doors and windows, leaking roofs, heaving and sinking concrete, and damage to siding and trim. Upon information and belief, these damages and others as will be proven at trial are the result of Defendants' wrongful conduct during the construction and sale of the homes and common property.

14. The Paired Units Association and the Townhome Association have served Defendants with a notice of claim in compliance with § 13-20-803.5, C.R.S. (2003 Supp.). The Defendants have been not responded to the notice of claim.

15. The submission of a notice of claim by the Paired Units Association and the Townhome Association render the present action timely.

16. Among themselves and others, Defendants consciously conspired and/or deliberately pursued a common plan or design to commit the tortious conduct alleged herein, rendering them all jointly and severally liable for damages resulting from such conduct.

FIRST CLAIM FOR RELIEF **Negligence as to all Defendants**

17. The foregoing paragraphs and the allegations contained therein are incorporated herein by reference.

18. Defendants, independent of any contract, had a legal duty to Plaintiffs, its members, and all foreseeable purchasers of the Greenbriar Paired Units and the Greenbriar Townhomes to

construct and maintain the properties in a workmanlike and non-negligent manner, free from defects.

19. Plaintiffs are informed and believe, and based thereon allege that Defendants breached this duty by failing to properly supervise and pay their subcontractors and by generally failing to exercise reasonable care in their construction and maintenance activities at the Greenbriar Paired Units and the Greenbriar Townhomes. This is evinced by the deficient construction and maintenance of the properties, which resulted in poor drainage, inadequate siding, and water leaks.

20. Although Defendants may not have intended or expected that their actions would cause damage, it was foreseeable that their negligent acts and omissions could cause damage to the property of Plaintiffs and their members.

21. Plaintiffs are informed and believe, and based thereon allege that Defendants' negligent acts and omissions have in fact caused damage to the property of Plaintiffs and their members in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF
Negligence Per Se as to All Defendants

22. The foregoing paragraphs and the allegations contained therein are incorporated herein by reference.

23. In constructing the Greenbriar Paired Units and the Greenbriar Townhomes, Defendants were under a duty, independent of any contract, to adhere to the local building code as well as other applicable codes, regulations, and ordinances.

24. Plaintiffs are informed and believe, and based thereon allege that Defendants violated these codes, as evinced by the deficient construction at the property, including but not limited to poor drainage, inadequate siding, and water leaks.

25. Plaintiffs and their members are within the class of persons that these codes were designed to protect.

26. These violations have caused actual damage to property, have resulted in the loss of use of property, have caused bodily injury, and present risks to the life, health, and safety of the residents of the communities.

27. Although Defendants may not have intended or expected that their actions would cause damage, it was foreseeable that their failure to adhere to the Uniform Building Code and the other applicable building codes, regulations and ordinances, could cause damage to the property of Plaintiffs and their members.

28. Plaintiffs are informed and believe, and based thereon alleges that Defendants' failure to adhere to these codes has in fact caused damage to the property of Plaintiffs and their members in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF

Breach of Implied Warranty of Habitability as to Defendant KB Home

29. The foregoing paragraphs and the allegations contained therein are incorporated herein by reference.

30. When the Plaintiffs and their members took possession of the homes and additional real property at the Greenbriar Paired Units and the Greenbriar Townhomes, they received an implied warranty that all property was fit for habitation, built in compliance with all applicable building codes, and constructed in a workmanlike manner.

31. Defendant KB Home breached the implied warranties given to Plaintiffs and their members by failing to build properties that were fit for habitation, failing to comply with all applicable building standards and codes, and failing to construct the properties in a workmanlike manner. These breaches are evinced by the deficient construction at the properties, including but not limited to poor drainage, inadequate siding, and water leaks.

32. Plaintiffs are informed and believe, and based thereon allege that, as a direct and proximate result of Defendant's breach of these implied warranties, the Plaintiffs and their members have suffered damages and losses in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF

Breach of Fiduciary Duty as to Defendants Chapman, Siler, and Lee

33. The foregoing paragraphs and the allegations contained therein are incorporated herein by reference.

34. Plaintiffs are informed and believe, and based thereon allege that Defendant KB Home, a declarant, appointed Defendants Brock Chapman, David Siler, and Michelle Lee to Plaintiffs' boards of directors.

35. Pursuant to § 38-33.3-303, C.R.S., appointees of a declarant to the board of directors of a common interest communities such as Greenbriar Paired Units and Greenbriar Townhomes owe a fiduciary duty to the associations and their members. In particular:

35.1. Defendants Chapman, Siler, and Lee owed a fiduciary duty to Plaintiffs and their members to act at all times in the best interests of Plaintiffs and their members.

35.2. Defendants Chapman, Siler, and Lee owed a fiduciary duty to Plaintiffs and their members to act in a reasonably competent and diligent manner to protect Plaintiffs and their members from defects in construction.

35.3. Defendants Chapman, Siler, and Lee owed a fiduciary duty to Plaintiffs and their members to ensure that the reserves of Plaintiffs were adequate to allow for repairs and maintenance of the properties.

35.4. Defendants Chapman, Siler, and Lee owed a fiduciary duty to Plaintiffs and their members to disclose that portions of Greenbriar Paired Units and Greenbriar Townhomes had not been built in a workmanlike manner or in compliance with applicable codes, regulations, and ordinances, to the extent the Defendants knew or should have known that these conditions existed.

36. Plaintiffs are informed and believe, and based thereon allege that Defendants Chapman, Siler, and Lee violated the fiduciary duties owed to the Plaintiffs and their members, by failing to act in the best interests of Plaintiffs and their members, by failing to make reasonably diligent efforts to protect Plaintiffs and their members from the construction defects alleged in this complaint, failing to ensure that the reserves of Plaintiffs were adequate to allow for repairs and maintenance of defective construction, and failing to disclose construction defects of which the Defendants knew or should have known.

37. Plaintiffs are informed and believe, and based thereon allege that, as a direct and proximate result of the breaches of fiduciary duties alleged herein, Plaintiffs and their members have suffered damages in an amount to be proven at trial.

FIFTH CLAIM FOR RELIEF
Negligent Misrepresentation as to Defendant KB Home

38. The foregoing paragraphs and the allegations contained therein are incorporated herein by reference.

39. Defendant KB Home negligently gave false information to Plaintiffs, their members, and/or the members' predecessors in interest, including without limitation that all construction complied with approved plans and specifications, minimum industry standards, and the recommendations of both a soils engineer and a structural engineer.

40. Defendant KB Home gave this information to Plaintiffs, their members, and/or their members' predecessors in interest in the course of Defendant's business and/or transactions in which Defendant had a financial interest, knowing that Plaintiffs and their members would use the information in a business transaction.

41. Plaintiffs, their members, and/or their members' predecessors in interest, relied upon this information.

42. Plaintiffs are informed and believe, and based thereon allege that this reliance caused financial losses to Plaintiffs, their members, and/or their members' predecessors in interest as well as damage to the properties of Plaintiffs, their members, and/or their members' predecessors in interest in an amount to be proven at trial.

SIXTH CLAIM FOR RELIEF
Deceptive Trade Practices as to Defendant KB Home

43. The foregoing paragraphs and the allegations contained therein are incorporated herein by reference.

44. Pursuant to § 6-1-105(1)(g), C.R.S. (2002), a person engages in a deceptive trade practice when, in the course of such a person's business, vocation or occupation, such person represents that property or services are of a particular standard, quality or grade, if he knows or should know that the property or services are of another.

45. Defendant KB Home represented that the construction at the Greenbriar Paired Units and Greenbriar Townhomes was of high standard, quality, or grade. Specifically, the Defendant represented that construction:

- 45.1. complied with approved plans and specifications;
- 45.2. complied with minimum industry standards; and
- 45.3. complied with the recommendations of both a soils and a structural engineer;

46. Plaintiffs are informed and believe, and based thereon allege that Defendant knew or should have known that the construction at the Greenbriar Paired Units and the Greenbriar Townhomes was of a lesser standard, quality, or grade than the foregoing, as evinced by the deficient construction at the properties, including but not limited to poor drainage, inadequate siding, and water leaks.

47. Pursuant to § 6-1-105(1)(r), C.R.S., a person engages in a deceptive trade practice when, in the course of such person's business, vocation or occupation, such person provides warranties, which under normal conditions could not be practically fulfilled or which are for such a period of time or are otherwise of such a nature as to have the capacity and tendency of misleading purchasers or prospective purchasers into believing that the goods or services so guaranteed have a greater degree of serviceability, durability, or performance capability in actual use than is true in fact.

48. Plaintiffs are informed and believe, and based thereon allege that Defendant provided warranties pursuant to the purchase and sale agreements that were misleading as to the value of

the warranty itself and as to the value of the property at the Greenbriar Paired Units and the Greenbriar Townhomes.

49. Plaintiffs are informed and believe, and based thereon allege that Defendant's actions, including but not limited to those alleged in this complaint, constituted deceptive trade practices.

50. The deceptive trade practices which Plaintiffs allege that Defendant committed significantly impact the public as actual or potential consumers of new residential construction and new home warranties.

51. In committing these deceptive trade practices, Defendant engaged in bad faith conduct as defined at § 6-1-113(2), C.R.S. (2002).

52. Defendant's deceptive trade practices have caused damages to Plaintiffs and their members in an amount to be proven at trial.

SEVENTH CLAIM FOR RELIEF
Breach of Contract as to Defendant KB Home

53. The foregoing paragraphs and the allegations contained therein are incorporated herein by reference.

54. Plaintiffs are informed and believe, and based thereon allege that Defendant entered into express and implied contracts with Plaintiffs and their members. The Defendant failed to adhere to many of the promises made in the contracts, including but not limited to promises that they had adhered or would adhere to certain provisions of the building codes applicable to the building/development of Plaintiffs and that they had completed or would complete portions of their work at the Greenbriar Paired Units and the Greenbriar Townhomes pursuant to the project specifications and plans. Defendant's contracts with Plaintiffs' members expressly contemplated and intended to confer a direct benefit on Plaintiffs as third-party beneficiaries to these contracts.

55. Defendant named herein and/or its agents or subcontractors breached the aforementioned contracts by building homes and common areas that did not comply with the project's approved construction plans and specifications and the minimum requirements of the relevant codes and/or laws and/or regulations. These breaches are evidenced by deficient construction at the property, including but not limited to siding and grading deficiencies.

56. Plaintiffs are informed and believe, and based thereon allege that, as a direct and proximate result of the Defendant's breach of these contracts, Plaintiffs and their members have suffered damages and losses in an amount to be proven at trial.

EIGHTH CLAIM FOR RELIEF
Breach of Express Warranty as to Defendant KB Home

57. The foregoing paragraphs and the allegations contained therein are incorporated herein by reference.

58. Plaintiffs are informed and believe, and based thereon allege that the Defendant provided each member of Plaintiffs with an express warranty that Defendant would repair, replace, or pay for the reasonable cost of repair or replacement, of any defects in materials or workmanship in member's unit or interest in the common elements of the Greenbriar Paired Units and the Greenbriar Townhomes upon timely notice.

59. Plaintiffs are informed and believe, and based thereon allege that some of their members have submitted timely notice to the Defendant of defects in materials or workmanship in the member's unit or interest in the common elements of the Greenbriar Paired Units and Greenbriar Townhomes, and that the Defendant either failed to repair, replace, or pay for the reasonable cost of repair or replacement of these defects, or failed to perform repairs in a reasonable and workmanlike manner.

60. Plaintiffs are informed and believe, and based thereon allege that, as a direct and proximate result of Defendant's breach of these warranties, Plaintiffs and their members have suffered damages and losses in an amount to be proven at trial.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests this Court to enter judgment in its favor and against Defendants as follows:

1. For money damages due to the property damage in an amount to be proven at trial against all Defendants.

2. For all costs, expenses, and attorney fees incurred by Plaintiffs as allowed by any applicable statutes or contracts.

3. Three times the amount of actual damages, plus costs and attorney fees, pursuant to § 6-1-113, C.R.S., to the maximum allowed by law.

4. For interest, as permitted by law, both from the date of damage or wrongful withholding to the date of the entry of judgment, as well as post-judgment interest until paid.

5. For all non-economic damages resultant from the property damage alleged herein, including all present or future annoyance, discomfort, inconvenience, aggravation, and loss of use and enjoyment.

6. For exemplary damages pursuant to § 13-21-102, C.R.S. for all conduct attended by circumstances of fraud, malice, insult, wanton or reckless disregard of the rights of Plaintiffs and their members.

7. For damages, including all expenses of litigation, including reasonable attorney fees, incurred by the Plaintiffs pursuant to § 38-33.3-311(1), C.R.S., suffered by the Plaintiffs as a result of Defendants' acts or omissions, which result in damages to the Common Interest Community.

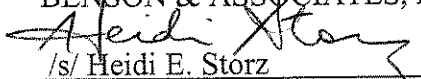
8. For all fees and costs, including, but not limited to, reasonable attorney fees and costs incurred as a result of the Defendants' failure to comply with any of the provisions of the Colorado Common Interest Homeownership Act, §§ 38-33.3-101 to -319, C.R.S., or with any provision of the Plaintiffs' Declarations, Bylaws, Articles, or Rules and Regulations, as authorized at § 38-33.3-123(1), C.R.S.

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

PLAINTIFFS DEMAND A TRIAL BY JURY.

Respectfully submitted this /10th/ day of January, 2007.

BENSON & ASSOCIATES, PC


/s/ Heidi E. Storz

Printed copy with original signature
available for review at the offices of
Benson & Associates PC.

Plaintiffs' Address:
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