

STATE OF MINNESOTA**DISTRICT COURT****COUNTY OF HENNEPIN****FOURTH JUDICIAL DISTRICT**

Case Type: Other Contracts

Life Time, Inc., LTF Club Operations Company,
Inc., LTF Operations Holdings, Inc., LTF Club
Management Company, LLC, and Bloomingdale
LIFE TIME Fitness, LLC,

Plaintiffs,

v.

Zurich American Insurance Company,

Defendant.

Court File No. _____

**COMPLAINT
(JURY TRIAL DEMANDED)**

COMPLAINT

For their Complaint against Zurich American Insurance Company (“Zurich”), Life Time, Inc., LTF Club Operations Company, Inc., LTF Operations Holdings, Inc., LTF Club Management Company, LLC, and Bloomingdale LIFE TIME Fitness, LLC (collectively “Life Time” and “Plaintiff-Insureds”) state and allege as follows:

NATURE OF THE ACTION

1. The governmental suspension orders issued around the country in response to COVID-19 have visited financial ruin on businesses nationwide. Consumer-facing businesses like health and fitness centers, restaurants, hotels and retail have been hit especially hard, suffering billions of dollars in business interruption loss due to the suspension of business.

2. Life Time is one of those businesses, having suffered more than \$200 million in interruption losses and damage as a result of the varied, state-by-state and local governmental suspensions necessarily put in place due to the spread and threat of COVID-19, a communicable disease. These varied governmental suspension orders have prohibited access to all or portions of

Life Time’s nearly 150 health and fitness centers throughout the United States (“centers” or “clubs”), as well as its related fitness, work, and other facilities, such as Life Time Swim School and Life Time Work (collectively, “Insured Locations”), leading to huge losses, expenses, and damages.

3. While a battle has begun in the nation’s courts between insurance companies and policyholders over insurance coverage for losses caused by COVID-19, even leading insurance executives to take to national media outlets to try to persuade the public that standardized virus exclusions in some policies categorically bar coverage for COVID-19 related losses, this case is different.

4. For the December 15, 2019 to December 15, 2020 policy period, Life Time purchased \$350,000,000 in limits under Zurich’s “EDGE Global” Policy, Policy No. *****9091 (“the 2020 Zurich Policy”), which is an insurance product Zurich holds out as providing policyholders with “higher limits, broader coverage and greater flexibility.”¹ **The 2020 Zurich Policy that Life Time purchased specifically includes special coverage limits for “Interruption By Communicable Disease.” (Exhibit A.)**

5. But when governmental suspension orders began to be issued in states and locales around the country, Zurich denied coverage for the full amount of Life Time’s mounting losses, offering just \$1,000,000 in coverage to Life Time, a measly quarter of one percent (.28 percent) of the 2020 Zurich Policy’s overall limit. According to Zurich, even though the 2020 Zurich Policy was issued to cover all of Life Time’s clubs and locations—more than 150 in all—\$1,000,000 is the maximum amount of insurance coverage available.

¹ See Zurich Press Release Announcing Product Release (April 22, 2008) (available at: www.zurichservices.com/zus/zna_config.nsf/pages/9123da88864cd81485257433006ed710!OpenDocument&Click=) (last accessed on August 18, 2020).

6. In fact, the 2020 Zurich Policy does not say anywhere that the promised coverage for “Interruption By Communicable Disease” has an aggregate limit of \$1,000,000. Rather, the 2020 Zurich Policy provides \$1,000,000 of coverage per Insured Location, for the more than 150 Life Time clubs and related facilities impacted by the governmental suspension orders.

7. In this insurance-coverage action, Life Time seeks a declaration of its rights and Zurich’s responsibilities under the 2020 Zurich Policy, and an award for more than \$130,000,000 in damages caused by Zurich’s breaches of contract and the covenant of good faith and fair dealing in connection with its wrongful failure to cover Life Time’s losses, expenses, and damages.

THE PARTIES

8. Life Time, Inc., LTF Club Operations Company, Inc., and LTF Operations Holdings, Inc. have their principal places of business in Chanhassen, Minnesota, and are organized under Minnesota law.

9. LTF Club Management Company, LLC has its principal place of business in Chanhassen, Minnesota, and is organized under Delaware law. Its members are residents of the state of Minnesota.

10. Bloomingdale LIFE TIME Fitness, LLC (“Bloomingdale LT”) has its principal place of business in Bloomingdale, Illinois, and is organized under Illinois law. Bloomingdale LT is a joint venture among three members—Life Time, Inc., Bloomingdale Sports Center Land Company (“BSC Land”), an Illinois corporation; and an Illinois corporation that is an affiliate of Central Du Page Health (“CD Health”) (collectively, “members”)—with respect to the Life Time club in Bloomingdale, IL (“Bloomingdale Life Time”). Life Time, Inc. manages the club and has

a 33⅓% ownership interest in Bloomingdale LT, while BSC Land and CD Health each have a 33⅓% ownership interest in Bloomingdale LT.²

11. Upon information and belief, Zurich is an insurance company organized under New York law with its principal place of business in Schaumburg, Illinois.

JURISDICTION AND VENUE

12. This Court has subject-matter jurisdiction over the matter alleged herein.

13. The 2020 Zurich Policy states: “Any disputes arising hereunder will be exclusively subject to the jurisdiction of a court of competent jurisdiction within the USA.”

14. Jurisdiction and venue are proper in Hennepin County, Minnesota under Minnesota Statutes §§ 484.01, 542.01, 542.09 and 543.19, including because the Plaintiff-Insureds’ claims or some part thereof arose in Hennepin County, Minnesota. With 13 Life Time centers and additional related facilities located in Hennepin County, there is no other county in the United States with more insured Life Time locations suffering COVID-19 interruption losses than Hennepin County.

15. Upon information and belief, Zurich regularly conducts its insurance business in Hennepin County, including having issued an insurance policy to Life Time in Minnesota covering Plaintiffs-Insureds’ properties in Hennepin County.

² Life Time has also suffered construction project losses in connection with COVID-19, including delay losses sustained by insured LTF Construction Company, LLC. Claims for insurance coverage for these losses have been made to Zurich under a separate Builder’s Risk policy purchased from Zurich for the 2019-2020 policy period as well as the 2020 Zurich Policy. On August 7, Zurich issued a coverage position on the Builder’s Risk coverage, which Life Time is evaluating. Accordingly, Life Time has not included the construction-related claims in this Complaint. Upon receipt of all construction-related coverage positions from Zurich, Life Time reserves the right to amend this Complaint and/or to commence a separate lawsuit as to coverage for the construction-related losses.

FACTUAL BACKGROUND

Zurich's Promise To Provide "Interruption By Communicable Disease" Coverage

16. On or about December 15, 2019, Life Time entered into a contract of insurance with Zurich, whereby Life Time agreed to make payments to Zurich in exchange for Zurich's promise to provide insurance protection to the Plaintiff-Insureds for losses, including, but not limited to, Life Time's business income losses at Insured Locations across the United States.

17. Life Time, Inc. is the "First Named Insured" under the 2020 Zurich Policy.

18. All of the Plaintiff-Insureds are insureds under the 2020 Zurich Policy.

19. A schedule of Life Time's Insured Locations is attached as Exhibit B (the "Schedule"). Columns of this Schedule unrelated to this business interruption loss have been removed so that the Schedule is easier to read.

20. The Insured Locations listed in the Schedule are covered under the 2020 Zurich Policy.

21. Pursuant to a written management agreement, Life Time, Inc. agreed as Manager exercising its management control on behalf of Bloomingdale LT to procure property insurance for the property. The Bloomingdale Life Time is an Insured Location listed on the Schedule attached to the 2020 Zurich Policy. With the consent and approval of BSC Land and CD Health, this suit therefore seeks recovery for all interruption loss at the Bloomingdale Life Time location on behalf of the full, undivided interest of Bloomingdale LT in the Insured Location.

22. The 2020 Zurich Policy is currently in full effect, with Life Time having faithfully paid policy premiums to Zurich to cover the Insured Locations and protect Life Time from losses to property, business personal property and business income, as well as extra expense.

23. Zurich promised to provide coverage to Life Time for “Interruption by Communicable Disease,” a special coverage under the 2020 Zurich Policy.

24. The 2020 Zurich Policy was a renewal of the insurance policy issued by Zurich for the prior year, from December 15, 2018 to December 15, 2019 (the “2019 Zurich Policy”).

25. Both the 2020 Zurich Policy and the prior 2019 Zurich Policy, which was the first year that Zurich insured Life Time, provide that the “Policy insures an Insured Location unless otherwise provided” and both provide Life Time with an annual Policy Limit of “\$350,000,000 for the total of all coverages combined regardless of the number of **Locations** involved.”

26. For interruption and loss caused by communicable disease, both the 2020 Zurich Policy and the prior 2019 Zurich Policy identify in their “Limit of Liability” sections that there is coverage of “\$1,000,000 Interruption By Communicable Disease,” and further indicate a “Qualifying Period” for “Interruption by Communicable Disease 48 Hours.”

27. The 2020 Zurich Policy does not state that the \$1,000,000 coverage amount listed for “Interruption By Communicable Disease” is an aggregate limit.

28. Other than the two identified references in paragraph 26 of this Complaint, neither the 2020 Zurich Policy nor the prior 2019 Zurich Policy further define or limit the “Interruption by Communicable Disease” coverage provided and promised to Life Time.

29. Neither the 2020 Zurich Policy nor the prior 2019 Zurich Policy include reference to an “Interruption by Communicable Disease” endorsement.

30. Zurich did not include or attach an “Interruption by Communicable Disease” endorsement to the 2020 Zurich Policy or the prior 2019 Zurich Policy that Zurich bound and issued to Life Time.

31. Accordingly, as issued, the 2020 Zurich Policy and the Prior Zurich Policy granted the broadest possible coverage to Life Time for business interruption at Insured Locations caused by Communicable Disease, without further applicable definitions or exclusions.

32. And, even if the endorsements Zurich now seeks to retroactively add to the 2020 Zurich Policy are considered, the endorsements as drafted by Zurich further support Life Time's entitlement to \$1,000,000 per Insured Location "Interruption by Communicable Disease" coverage.

Life Time's Interruption By Communicable Disease

33. Life Time's business focus is on helping people lead healthy and happy lives. Life Time operates nearly 150 full-service health and fitness centers throughout the United States, providing a wide range of healthy living services to its members and guests. These include traditional fitness classes and training, pools, racquet sports, healthy cafes, salons and spas, kids academies, and more. Life Time also operates various facilities focused on particular activities, such as co-working spaces, or facilities focused on particular sports such as swimming or soccer.

34. Prior to the onset of COVID-19, Life Time's national membership totaled approximately 1.68 million people. Life Time's members and guests include people of all age demographics.

35. COVID-19 is a communicable disease that leads to sickness, injury, and death. According to the Centers for Disease Control and Prevention ("CDC"), COVID-19 is believed to spread mainly from person to person, primarily through respiratory droplets produced when an infected person coughs, sneezes, or talks, with spread being more likely when people are in close contact with one another.

36. On March 11, 2020, COVID-19 was declared a pandemic by the World Health Organization.

37. Thereafter, state and local government authorities began to issue quarantine and suspension orders across the country. These governmental orders have had a serious impact on Life Time's business, members, and guests, prohibiting access to and use of Life Time's Insured Locations, including its many services.

38. The severe business interruption Life Time has suffered because of the spread of COVID-19 and the governmental orders has resulted in more than \$200 million in interruption loss, expense, and damage, including physical damage to insured property. By way of non-exhaustive examples only, Life Time's losses, expenses, and damages have arisen from lost membership revenue and earnings, including membership dues credits, uncharged dues during closures, memberships cancelled or placed on hold, and fewer new memberships; lost revenue and earnings from in-club services, including sales of personal training, kids programs, spa services, and food and beverage sales at cafes; and costs and expenses that would not otherwise have been incurred, including expenses to clean and remediate the Insured Locations and to develop and implement new safety protocols for Insured Locations upon limited reopenings. These are only some examples of how the interruption has impacted Life Time.

Zurich's Breach of Contract and Denial of Full Coverage to Life Time

39. On March 24, 2020, Life Time submitted notice of losses to Zurich, requesting all available coverage on account of its interruption by communicable disease.

40. Without mentioning Life Time's notice, by email of April 8, 2020, Zurich attempted to unilaterally modify the Policy by retroactively adding a "Communicable Disease Endorsement" and "Crisis Management Endorsement" to the 2020 Zurich Policy and 2019 Zurich

Policy, sending an email with the endorsements to Life Time's broker and stating that the absence of the endorsements in the bound and issued 2020 Zurich Policy and 2019 Zurich Policy "was a clerical error."

41. Life Time's broker responded to Zurich by advising that it would not simply accept the changes and did not know whether Zurich had the legal right to make unilateral changes and modify the insurance policy terms.

42. A week later on April 15, 2020, Zurich responded to Life Time's notice and request for coverage, sending Life Time its reservation of rights letter.

43. Zurich's coverage letter did not even mention the communication with Life Time's broker advising of Zurich's view that mistakes were made on the 2020 Zurich Policy.

44. Instead, Zurich asserted that the 2020 Zurich Policy "contains an Endorsement for Interruption by Communicable Disease" providing as follows:

Endorsement Number 03

The following is added to SECTION B- Special Coverages & Described Causes of Loss

INTERRUPTION BY COMMUNICABLE DISEASE

The company will pay for the actual Gross Earnings loss sustained by the Insured, as provided by this Policy, resulting from the necessary **Suspension** of the Insured's business activities at any Insured Location if the **Suspension** is caused by order of an authorized governmental agency enforcing any law or ordinance regulating communicable diseases and that such portions of the location are declared uninhabitable due to the threat of the spread of communicable disease, prohibiting access to those portions of the **Location**.

This Policy also covers the reasonable and necessary cost incurred for the cleanup, removal and disposal of the actual not suspected presence of substances(s) [sic] causing the spread of such communicable disease and to restore the locations in a manner so as to satisfy such authorized governmental agency.

The Coverage will only apply when the period of time that access is prohibited exceeds the time shown as the **Qualifying Period in the Qualifying Period** clause

of the Declarations section. If the **Qualifying Period** is exceeded, then this Policy will pay for the amount of loss in excess of the Policy Deductible, but not to exceed the number of consecutive days following such order as stated in the Declarations up to the limit applying to this Coverage.

This Coverage will not apply to loss or damage that is payable under any other provisions in this Policy.

(Zurich's April 15, 2020 Reservation of Rights Letter at pages 5-6.)

45. In characterizing the scope of coverage for "Interruption By Communicable Disease" available to Life Time under the 2020 Zurich Policy, Zurich's April 15, 2020 letter advised:

In order for coverage to apply under the Interruption by Communicable Disease provision, the insured must demonstrate, among other things, a suspension of the insured's operations caused by an order of an authorized governmental agency to enforce a law or ordinance regulating communicable disease and that the order results in a declaration that all or a portion of the location is declared uninhabitable as a result of the threat of the spread of communicable disease, such that access to the location or portions of the location is prohibited.

46. In addition to quoting an "Endorsement No. 03" that was not referenced in or attached to the 2020 Zurich Policy, Zurich's letter did not mention the \$350,000,000 total amount of the coverage under the 2020 Zurich Policy. Nor did Zurich mention the grant of "\$1,000,000 Interruption By Communicable Disease" coverage for the 150-plus Insured Locations affected by the governmental orders and COVID-19 pandemic. Zurich's letter was entirely silent on the amounts of insurance potentially available to Life Time. (*Id.* at pages 1-7.)

47. Zurich also failed to even address or explain why it believed that an Endorsement No. 03 was a part of the 2020 Zurich Policy, when no such endorsement was referenced or attached in the 2020 Zurich Policy issued to Life Time. (*Id.*)

48. Life Time responded to Zurich's April 15, 2020 Reservation of Rights letter and addressed the absence of coverage terms for the "Interruption by Communicable Disease" coverage in the issued 2020 Zurich Policy as follows:

The Policy's "FORMS ATTACHED TO THE POLICY" does not include reference to an "Interruption by Communicable Disease" form or endorsement and none was attached to the Policy. Although Zurich sought on April 8, 2020 by e-mail communication to Life Time's broker, Willis Tower Watson Midwest ("Willis"), to add "Interruption by Communicable Disease" and "Crisis Management" endorsements to the Policy ("Proposed Endorsements"), Life Time reserves all rights regarding whether the Proposed Endorsements can be retroactively added to the Policy, which presently has no terms limiting these coverage grants. We understand that Zurich claims that the Proposed Endorsements were "inadvertently left off" Life Time's policies for the 2018-19 policy year ([*****]99-00) and the 2019-20 policy year (the Policy) as a "clerical error." However, because at this time Life Time and Willis continue to investigate this issue, as I requested in our telephone call on April 6, 2020, we would like to review all of Zurich's "Communicable Disease" and "Crisis management" coverage extensions, endorsements, or other wording issued over the last two years.

(Life Time's May 13, 2020 Letter to Zurich at page 2.)

49. Zurich's response to Life Time's May 13, 2020 letter did not address the lack of a "Interruption by Communicable Disease" endorsement in the issued 2020 Zurich Policy, stating only:

This claim hit my follow up diary today. So thank you for the letter and understand.

Also, we too are still reviewing coverage. If any new updates come up on the claim please let us know.

In the meantime, if you have any questions let me know.

(Zurich's May 13, 2020 E-mail to Life Time.)

50. On May 29, 2020, Zurich emailed the following one-sentence statement regarding its view of coverage for "Interruption by Communicable Disease" under the 2020 Policy: "Per my

voicemail today, please note that we are proceeding with coverage under the ‘Communicable Disease’ Limit of insurance \$1,000,000.”

51. On June 25, 2020, after Life Time requested a more fulsome written coverage position, Zurich communicated the following regarding its view of the amount of coverage for “Interruption By Communicable Disease” under the 2020 Zurich Policy:

- 1.) *Coverage-I explained we are extending coverage under the Communicable Disease Provision up to \$1,000,000.*
- 2.) You inquired above including all locations “losses” under one Occurrence-As pointed out under Section 7.45 Occurrence-All loss(es) or damage that is attributable directly or indirectly to one cause or a series of similar or related causes. All such loss(es) or damage will be treated as one **Occurrence**. However, if **Occurrence** is specifically defined anywhere in this Policy, that definition will apply to the applicable coverage provided. *Hence, all locations will be treated as one Occurrence.*
- 3.) The Policy excludes virus a “Contaminant” exclusion under section 3.03.01.01.
- 4.) Contamination Definition is amended in the LA Endorsement to not include Virus. Please note Lifetime does not have any locations within Louisiana so this modification would not be applicable.
- 5.) Life Time is (not subject) to the full limit of the policy \$350,000,000 as the main policy as mentioned above excludes virus as a covered cause of loss. *Virus is Endorsed in the policy by the “Interruption of Communicable Disease” Coverage Provision. As such, the coverage cause of loss is “Communicable Disease” again subject to a \$1,000,000 limit.*

(Zurich’s April 25, 2020 E-mail to Life Time (formatted as in original with emphasis added).)

52. Like its April 25, 2020 Reservation of Rights letter, Zurich again ignored and failed to address the absence of limiting coverage terms or endorsements for “Interruption By Communicable Disease” under the 2020 Zurich Policy as bound and issued to Life Time.

53. In addition to representing that Zurich had bound and issued its 2020 Zurich Policy with a limiting endorsement for “Interruption By Communicable Disease,” when it had not, Zurich’s coverage communications, likewise, failed to address the provisions in the 2020 Zurich

Policy that preclude Zurich from making unilateral changes to the 2020 Zurich Policy terms, including by notice to an agent.

54. These “POLICY MODIFICATION” provisions of the 2020 Zurich Policy state:

6.17.01 This Policy contains all of the agreements between the Insured and the Company concerning this insurance. *The Insured and the Company* may request changes to this Policy. Only endorsements issued by the Company and made a part of this Policy can change this Policy.

6.17.02 *Notice to any agent or knowledge possessed by any agent or by any other person will not create a waiver or change any part of the Policy* or prevent the Company from asserting any rights under the Policy.

(Emphasis added.)

55. Zurich’s coverage position under the 2020 Zurich Policy is that the added endorsement for “Interruption By Communicable Disease” shows that there is an aggregate total of \$1,000,000 in coverage available for all business interruption loss regardless of the number of Life Time Insured Locations affected. But Zurich’s position is contradicted by the terms of the very endorsements Zurich seeks to impose.

56. As described above, Zurich seeks to add two endorsements to the Policy, an “Interruption by Communicable Disease” endorsement and a “Crisis Event Management” endorsement.

57. The proposed Endorsement No. 03, Interruption by Communicable Disease is attached as Exhibit C. It indicates that it is a change to “Limits/Exposures” and it expressly references and covers the “**Suspension** of the Insured’s business activities at *an Insured Location*” (emphasis added) if caused by order of an authorized governmental agency enforcing any law or ordinance regulating communicable diseases. The 2020 Zurich Policy and the newly proposed endorsement for Interruption by Communicable Disease do not include an “Annual Aggregate

Limit of Liability” for this Insured Location coverage, nor do they reference any “per occurrence” aggregate or applicable deductible. (*Id.*)

58. In contrast to the Insured Location coverage provided by Endorsement No. 03, Zurich’s newly proposed Endorsement No. 04, Crisis Event Management, that Zurich also retroactively seeks to add to the 2020 Zurich Policy, does provide for a limit of \$1,000,000 per occurrence with an applicable \$100,000 deductible. That Endorsement is attached as Exhibit D. It expressly advises Life Time in the endorsement that:

The most the Company will pay for this added coverage in excess of the deductible is \$1,000,000 *per occurrence*.

The deductible applying to this coverage is \$100,000.

Id. (emphasis supplied).

59. Accordingly, even if both Endorsement No. 03 and Endorsement No. 04 were determined by this Court to have been properly added by Zurich to the Policy, Zurich’s wording further demonstrates that the Endorsement No. 03 Interruption by Communicable Disease coverage applies on a per Insured Location basis with \$1,000,000 in limits available for each Insured Location. In contrast, the Endorsement No. 04 Crisis Event Management coverage applies on a “per occurrence” basis with \$1,000,000 as “[t]he most the company will pay for this added coverage in excess of the deductible.”

60. Therefore, Zurich’s position that an aggregate limit of \$1,000,000 is available under the 2020 Zurich Policy for all of Life Time’s business interruption loss at all of Life Time’s Insured Locations combined is erroneous, as evidenced by, *e.g.*, the Policy itself and the terms of the proposed Endorsement Nos. 03 and 04 that Zurich seeks to graft onto the 2020 Zurich Policy.

COUNT ONE
(Declaratory Judgment)

61. Life Time incorporates and reasserts herein all of the foregoing paragraphs.

62. The 2020 Zurich Policy is a valid and enforceable contract of insurance between Zurich and Life Time.

63. Pursuant to the terms and conditions of the 2020 Zurich Policy, Life Time is entitled to \$1,000,000 in “Interruption by Communicable Disease” coverage for each Insured Location up to a total aggregate policy limit of coverage of \$350,000,000.

64. Zurich has advised Life Time of its position that the 2020 Zurich Policy only provides an aggregate limit of \$1,000,000 in “Interruption by Communicable Disease” coverage across all Insured Locations.

65. An actual, justiciable controversy exists between the parties, with Life Time seeking a declaration that it is entitled to up to \$1,000,000 in “Interruption by Communicable Disease” coverage for each of Life Time’s Insured Locations, subject to the \$350,000,000 aggregate limit of liability under the 2020 Zurich Policy.

COUNT TWO
(Breach of Contract)

66. Life Time incorporates and reasserts herein all of the foregoing paragraphs.

67. The 2020 Zurich Policy is a contract.

68. Under the 2020 Zurich Policy, Zurich promised to pay Life Time for \$1,000,000 in “Interruption by Communicable Disease” coverage at any Insured Location up to the Policy Limit of \$350,000,000 “for the total of all coverages combined regardless of the number of **Locations** involved.”

69. Life Time has sustained covered “Interruption by Communicable Disease” loss at its more than 150 Insured Locations and seeks up to the \$1,000,000 per Insured Location coverage from Zurich at each Insured Location.

70. Zurich has refused to provide Life Time with coverage up to \$1,000,000 for each Insured Location for “Interruption by Communicable Disease.” Instead, Zurich has advised Life Time that it will only pay an aggregate total of \$1,000,000 in business interruption costs across all of Life Time’s Insured Locations.

71. By refusing to provide Life Time with \$1,000,000 “Interruption by Communicable Disease” coverage for each Insured Location, and by refusing and failing to pay Life Time what is owed under the 2020 Zurich Policy, Zurich has breached the 2020 Zurich Policy.

72. As a result of Zurich’s breach of contract, Life Time has suffered damages over \$130,000,000, exclusive of interest and costs.

COUNT THREE
(Breach of the Covenant of Good Faith and Fair Dealing)

73. Life Time incorporates and reasserts herein all of the foregoing paragraphs.

74. The 2020 Zurich Policy is a contract.

75. The covenant of good faith and fair dealing is implicit and contained within all contracts, including the 2020 Zurich Policy.

76. One of the purposes of the insurance protection Zurich promised to provide to Life Time under the 2020 Zurich Policy is to protect Life Time from business interruption losses. Such insurance protection comes not just from Life Time’s receipt of money, but also from receipt of insurance proceeds promptly, so that when business suspensions and closures occur, as Life Time has experienced and continues to experience, the business can weather the interruption and get back on its feet as soon as possible.

77. Zurich has failed to provide clear, timely, and accurate coverage communications to Life Time.

78. On April 8, 2020, Zurich attempted to unilaterally revise the 2020 Zurich Policy by sending new endorsements to Life Time's broker without notice or explanation to Life Time about the requested changes.

79. On April 15, 2020, Zurich then issued a reservation of rights letter that failed to mention its purported policy revisions. Zurich's reservation of rights letter also failed to address any alleged limits in the Policy, omitting any reference to the aggregate cap of \$350,000,000 in total coverage and failing to set forth its position that there is a \$1 million aggregate cap on the coverage available for "Interruption By Communicable Disease" losses at all of Life Time's Insured Locations.

80. On May 13, 2020, after Zurich failed to respond to an oral request for them, Life Time requested in writing from Zurich all of its "Communicable Disease" and "Crisis Management" coverage extensions, endorsements, or other wording issued over the last two years, while reserving all rights as to Zurich's attempted unilateral retroactive policy revision. Zurich failed to provide such documents.

81. For months after Life Time's notice of loss, Zurich failed to set forth in writing its position that there is an aggregate policy limit of \$1 million available to Life Time under the 2020 Zurich Policy for "Interruption by Communicable Disease," first notifying Life Time by voicemail and a short email on May 29, 2020 that Zurich is "proceeding with coverage under the 'Communicable Disease' Limit of insurance \$1,000,000" and then, only after Life Time requested a more fulsome written coverage position, by another email on June 25, 2020 clarifying and confirming Zurich's view that "all locations will be treated as one Occurrence."

82. Through its handling of Life Time's insurance claim and conduct, including its refusal to provide Life Time with \$1,000,000 "Interruption by Communicable Disease" coverage

for each Insured Location, Zurich has breached the covenant of good faith and fair dealing in the 2020 Zurich Policy.

83. As a result of Zurich's breach of contract and breach of the covenant of good faith and fair dealing, Life Time has suffered damages, including consequential damages, of over \$130,000,000, exclusive of interest and costs.

PRAYER FOR RELIEF

WHEREFORE, Life Time requests judgment in its favor and against Zurich, providing Life Time with the following:

- a. A judicial declaration that Life Time is entitled to \$1,000,000 in coverage for each Insured Location in "Interruption by Communicable Disease" coverage under the 2020 Zurich Policy, subject to the \$350,000,000 Policy Limit "for the total of all coverages combined regardless of the number of **Locations** involved";
- b. An award of compensatory damages resulting from Zurich's breach of its duty to pay Life Time in an amount to be proven at trial under the 2020 Zurich Policy;
- c. All damages allowed by law, including all consequential damages flowing from Zurich's breach of its duties under the 2020 Zurich Policy, the covenant of good faith and fair dealing, and applicable law;
- d. All interest on the above-described amounts allowed by law, including but not limited to all prejudgment interest due under Minn. Stat. § 60A.0811;
- e. All attorneys' fees, costs, and expenses allowed by law; and
- f. Such other and further relief as the Court deems necessary, just, or proper.

DEMAND FOR JURY TRIAL

Life Time hereby demands a trial by jury on all matters and issues so triable.

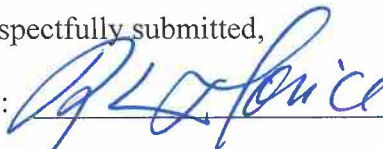
RESERVATION OF RIGHT TO AMEND

Life Time reserves the right to amend its Complaint under Minn. Stat. § 604.18.

Dated: August 19, 2020

Respectfully submitted,

By:


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**ATTORNEYS FOR LIFE TIME, INC., LTF
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MINN. STAT. § 549.211 ACKNOWLEDGMENT

The parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party pursuant to Minn. Stat. § 549.211.



Rikke Dierssen-Morice