

OFFICE OF THE COUNTY ADMINISTRATOR

600 West Fourth Street
Davenport, Iowa 52801-1003

Office: (563) 326-8702
Fax: (563) 328-3285
www.scottcountyiowa.com



December 18, 2020

TO: Mahesh Sharma, County Administrator

FROM: David Farmer, CPA, MPA Director of Budget and Administrative Services

RE: Vaccine Administration Site Lease

Scott County Health Department and Scott County Emergency Management Agency has worked together to procure a site to administer the COVID-19 vaccines to the local community. The location will be at the former Sears retail store located at North Park Mall, 320 West Kimberly Road, Davenport.

The owner of the property will be donating the lease space to the county, while the county is responsible for a portion of the utilities beyond the normal usage. This amount has been set at \$4,215.00 per month. The initial lease term begins January 2021. The cost of running the vaccine clinic will be incurred by the County rather than EMA based on guidance from the State of Iowa. Logistical support will continue to be supplied by Scott County Health Department and Scott County Emergency Management Agency.

Scott County will pay for services through the County's amended 2021 budget as a non-departmental expenditures, while staffing will be a health department expenditures. The County expects to apply for FEMA funding for the site lease, while the Health department will apply departmental grant funds.

We recommend the county enter into the lease agreement.

CC: Dave Donovan, Scott County EMA Director
Mary Thee, Assistant County Administrator
Amy Thoreson, Deputy Health Director

SEARS SHORT TERM EVENT and PARKING LOT LICENSE AGREEMENT

<p>Licensee: Scott County, Iowa 1100 E. 46th Street Davenport, IA 52807</p> <p>Contact Name: Dave Donovan Telephone: 563-505-6992 (cell) Email: David.Donovan@scottcountyiowa.gov</p>	<p>Licensor: Transform SHC Licensed Businesses LLC 3333 Beverly Road, Hoffman Estates, IL 60179</p> <p>Contact: Wendy Carges Officer Phone: 847-286-2662 Cell Phone: 847-800-7127 Email: Wendy.Carges@transformco.com</p>
<p>Location: Vacant Sears Retail Store Store No.: #2760 Northpark Mall 320 W. Kimberly Road Davenport, IA 52806</p>	<p>Term: Start Date: 12//18/20 End Date: 6/30/21 Hours: 24/7, As needed</p> <p>Permitted Use: Preparation, storage and distribution of Covid-19 vaccinations</p>
<p>Fee: \$4,214.00/month beginning January, 2021</p> <p>Any Fee Payable to: Transform SHC Licensed Businesses LLC</p> <p><u>Remittance Address</u> Attention: Wendy Carges Transform SHC Licensed Businesses LLC 3333 Beverly Road, D3-278B-H Hoffman Estates, IL 60179</p>	<p>Permission to secure temporary structures to pavement?</p> <p>No <input checked="" type="checkbox"/></p>
<p>Signed: Scott County, Iowa</p> <p>By: David Donovan Title: Director, Scott County Emergency Communications Center Date: _____, 2020</p>	<p>Signed: Transform SHC Licensed Businesses LLC</p> <p>By: Wendy J. Carges Title: Director of Licensed Business Date: _____, 2020</p>

INSURANCE CHECKLIST

Licensee: Scott County, Iowa

Please Read Carefully & Sign Page Two

Note: Named Insured listed on the Certificates of Insurance and Licensee name on the Parking Lot and Event License Agreement must be the same.

PRIOR TO SETTING UP YOUR EVENT, CERTIFICATES OF INSURANCE MUST BE ON FILE WITH THIS OFFICE.

Pursuant to the *License Agreement*, the following insurance coverage is required:

Licensee shall carry, during the Term, the following insurance covering the use of the Premises, from companies rated A-/VII or better by A.M. Best:

- Commercial General Liability:*** covering premises/operations; products/completed operations; contractual liability; personal/advertising injury; and contractors' contingent liability, with combined **single limits of at least Two Million (\$2,000,000.00) per occurrence for bodily injury and property damage**, including Licensor and Landlord as additional insured and with Licensee's insurance being primary to Licensor's. Limits of liability requirements may be satisfied by a combination of Commercial General Liability and Umbrella Excess Liability policies.
- Certificate Holder*** is to be: Transform SHC Licensed Businesses LLC
Mail Stop: D3-278B
3333 Beverly Road
Hoffman Estates, Illinois 60179
- Additional Insured:*** The following language MUST be included (usually entered in the Special Provisions area of the Certificate)

**Transform MidCo and its Subsidiaries and Affiliates are
Additionally Insured With Respect to General Liability**

INSURANCE CHECKLIST - page 2

Licensee: Scott County, Iowa

Please read and sign:

- Workers Compensation** covering employees of licensee in all states where licensee operates, with a waiver of subrogation in favor of licensor (where permitted by law) and Employer's Liability Insurance with limits of at least Five Hundred Thousand (\$500,000) per accident or disease

Check one:

Yes, I have employees who will be associated with this parking lot event and I will provide appropriate evidence of insurance prior to setting up for business.

No, I do not have employees associated with this parking lot event.

- Medical Professional Liability Insurance** in the amounts of \$1,000,000 per claim and \$5,000,000 in the aggregate for professional services provided to patients, provided that, if the professional liability policy is combined with the general liability policy, then the combined limits shall be as required for such general liability policy above, plus \$1,000,000
- All Risk Property on all of Licensee-owned property**, including perils covered by a Causes of Loss-Special Form, including fire and extended coverage, windstorm, vandalism and malicious mischief, and sprinkler leakage at 100% replacement cost. If Licensee is unable to obtain such All Risk Property coverage from any source, Licensor may waive such coverage in its sole discretion, provided that any such waiver will not relieve Licensee from any liability otherwise covered by such coverage or require Licensor to obtain such coverage on behalf of licensee or in licensor's own name.

STATEMENT IN LIEU OF PROPERTY COVERAGE

I, David Donovan, authorized agent of Scott County, IA, as the licensee named in the License Agreement dated _____, agree not to hold licensor responsible for any loss of property I may suffer during the course of the event described therein.

Signed: _____ Date: _____

Terms and Conditions

1. **Premises.** Licensor licenses to Licensee the use of the premises described above and on Schedule 1 (the “**Premises**”), located on property owned or leased by Licensor at the above address (the “**Entire Tract**”).
2. **Use.** Licensee may use the Premises for the use described above (“**Use**”) and for no other use. Licensor does not represent the Premises as suitable for Licensee’s intended use; rather, Licensee has inspected the Premises and accepts it as suitable and adequate for Licensee’s intended use. Licensee shall not damage the pavement, such as by making holes for temporary structure posts, or otherwise. Licensee may not post any advertising or other materials on any portion of the Entire Tract, other than within the Premises. Licensee is permitted to place directional signage and identifying signage for the purposes of directing the public to the public entrance of the permitted use. Licensee will secure at its cost any required permits and will comply with all federal, state and local governmental laws, rules, regulations and ordinances in its use of the Premises.
3. **Term.** Licensee’s Use begins on the Start Date stated above (the “**Start Date**”) and ends on the End Date stated above (the “**Term**”), except that Licensor may terminate this Agreement upon at any time and for any reason, upon 30 day oral or written notice to Licensee. If oral notice is given, Licensor will follow with confirming written notice. If Licensor terminates early, Licensor will refund the unearned portion of any prepaid Fee. Licensee is not entitled to recover any other costs, damages, or lost profits. Within two days after the End Date (or earlier termination), Licensee shall:
 - (a) remove all its equipment, personnel, and supplies from the Premises;
 - (b) remove all rubbish and debris resulting from its activities;
 - (c) repair any damage to the Premises caused by its activities, restoring it to the same or better condition as before Licensee’s use; and
 - (d) unless requested by Licensor not to do so, cancel all government approvals, permits and licenses for the Use.

If Licensee fails to comply with any of subsections (a) through (c), Licensor may levy a cleaning/repair fee of \$2,000.00 to be paid by Licensee within five (5) days of notice of such failure.

4. Fees and Taxes.

- (a) *Fee.* On or before the Start Date, Licensee shall pay Licensor for this Agreement the Fee stated above. If the Fee is based on a percentage of Licensee’s sales, Licensor is entitled to audit Licensee’s books at any reasonable time at Licensee’s offices, to confirm the actual volume of sales and payment of the correct Fee amount. Licensor will submit an invoice to Licensee for use in processing monthly payment.
- (b) *Payment.* Licensee shall pay all Fees and the Security Deposit by check or money order. No cash payments will be allowed.
- (c) *Taxes.* Licensee shall pay all state and local taxes (including sales and excise taxes) due resulting from its Use of the Premises, and shall upon Licensor’s request provide Licensor reasonable evidence and documenting support that the correct tax amounts have been paid.

5. **Advertising.** Licensee may at its cost shall arrange for the preparation and placement of all advertising signage and direct mail programs related to the License, the Premises and Licensee’s business. Licensee must submit and obtain Licensor’s approval for all advertising materials before displaying or disseminating them. Licensor may withhold or revoke its approval at any time in its sole discretion. Licensee shall allow Licensor to use the name, trademarks and all other rights related to the Licensee. Licensee may use Licensor’s name (not its trademark logo) for the sole purpose of identifying the location of the License in its advertising, permit applications, and correspondence. Otherwise, Licensee shall not use, print or duplicate the name of Kmart, Sears, Roebuck and Co., or any of the trademarks, trade names, service marks, logos, assignees, programs and License names, identifications, and other proprietary rights and privileges licensed to or used by either of them (“**Licensor Marks**”) for any purpose, without the prior written consent in each instance of Licensor which Licensor may withhold or withdraw in its discretion. This Agreement does not provide a license or assignment of any right in the Licensor Marks. Licensee shall not do anything that impairs Licensor’s exclusive rights in the Licensor Marks.

6. Operating Restrictions, Repairs, Maintenance and Utilities.

- (a) *Repairs.* Licensee will make all repairs and replacements to the Premises that become necessary as a result of Licensee’s use of the Premises. Licensee also will keep the

Premises in clean and safe condition, meeting applicable local laws. Licensee will keep the Premises and any improvements and fixtures on it in good order and repair.

- (b) *Snow Removal.* Licensee is solely responsible for parking lot, access area, and any connecting sidewalk snow removal arrangements and cost. Licensor shall have no direct or third party liability for any such snow related issues or claims that may arise during the term of this License Agreement.
- (c) *Access.* Licensor may access the Premises at any time.
- (d) *Utilities.* Licensor will provide electricity, water and heat to the premises at no extra charge. Licensee will pay for any additional utilities in connection with its use of the Premises.
- (e) *Barriers.* Licensee shall keep the Premises free from barriers that have not been approved by Licensor in advance. Licensee shall keep the Premises and nearby areas in a clean, neat and presentable condition at all times, free from trash, spills and unsightly materials. Licensee must keep all trash receptacles out of sight.
- (f) *Parking.* Licensee shall not permit the parking of semi-truck trailers or other heavy equipment on the Premises or elsewhere on the Entire Tract, except that Licensee may unload goods and materials from semi-truck trailers on the Premises for less than one hour and in such a manner as not to interfere with traffic flow in the parking lot.
- (g) *Permits.* Licensee must secure at its own cost any required permits and must comply with all federal, state and local governmental laws, rules, regulations, and ordinances in its use of the Premises.

7. Relocation. Licensor may relocate, adjust, or reconfigure the Premises, or substitute other areas of the Entire Tract for the Premises, upon fourteen day advance written notice, in Licensor's discretion. In that event, Licensee will bear all costs of moving its equipment and operations. If Licensee does not consent to such relocation, this Agreement will terminate and Licensee shall vacate immediately.

8. Revocation. Licensor may revoke this License upon fourteen day advance written notice, for any reason or no reason at all, and Licensor shall refund the unearned portion of any fees paid (with fees prorated over the license period). Licensee will cease using and will vacate the Premises as of the date of revocation.

9. Warranties. Licensee warrants that it is authorized to perform under the license in the state where the Premises is located, and all activities, fixtures, structures, and personnel used by Licensee comply with all laws and regulations, including the Americans with Disabilities Act, child labor laws, minimum wage laws, import laws. Licensee shall not use the Premises for any use that:

- (a) is a public or private nuisance;
- (b) uses or produces:
 - (i) amplified sound or noise objectionable to the neighboring businesses or residents,
 - (ii) obnoxious, toxic, caustic or corrosive odors, fumes, fuel or gas,
 - (iii) excessive dust, dirt or ash, or
 - (iv) fire, explosion or other hazard;
- (c) could cause the cancellation of or increase in the rates for Licensor's insurance policies or programs; or,
- (d) in Licensor's sole judgment could injure Licensor's reputation or is inconsistent with a family-oriented shopping center. Licensee will secure at its cost any required permits and will comply with all federal, state and local governmental laws, rules, regulations and ordinances in its use of the Premises.

10. Risk of Loss. Licensee uses the Premises at its own risk. Licensor has no responsibility or liability for loss of or damage to property of Licensee, its employees, agents, contractors or invitees. Licensor is not responsible or liable to Licensee or to anyone claiming through Licensee for loss or damage that may occur through the acts or omissions of any person or occupant of the Entire Tract, from any cause whatsoever. Licensee shall not do anything in or about the Premises, or bring anything onto the Premises or keep anything on the Premises that increases Licensor's cost of insurance on the Entire Tract or any part of it.

11. Insurance. Licensee shall carry, during the Term, the following insurance covering the use of the Premises, from companies rated A-/VII or better by A.M. Best:

- (a) *Workers Compensation* covering employees of Licensee in all states where Licensee operates, with a waiver of subrogation in favor of Licensor (where permitted by law) and Employer's Liability Insurance with limits of at least \$500,000.00 per accident or disease.
- (b) *Commercial General Liability* covering premises/operations, products/completed

operations, contractual liability, personal/advertising injury, and contractors' contingent liability, with combined single limits of at least \$2,000,000 per occurrence for bodily injury and property damage, including Licensor and its landlord as additional insureds, and with Licensee's insurance being primary to Licensor's.

- (c) *All Risk Property* on all of Licensee-owned property, including perils covered by a Causes of Loss - Special Form, including fire and extended coverage, windstorm, vandalism and malicious mischief, and sprinkler leakage, at 100% replacement cost. If Licensee is unable to obtain such All Risk Property coverage from any source, Licensor may waive such coverage in its sole discretion, provided that any such waiver will not relieve Licensee from any liability otherwise covered by such coverage or require Licensor to obtain such coverage on behalf of Licensee or in Licensor's own name.

Each policy must provide that it cannot be cancelled or materially changed without 30 days prior written notice to Licensor. Licensee will furnish Licensor, by the Start Date, insurance certificates for the required coverages and, upon request, copies of the policies. Licensee's deductible under any policy must not exceed \$10,000. Licensee will require its contractors to carry the same insurance. Licensee releases Licensor, and on behalf of its insurers, waives its right to recover against Licensor for loss or damage that is customarily insurable by a fire and extended coverage insurance policy. Licensee is self-insured unit of local government.

12. Indemnity.

- (a) To the extent permitted by law, Licensee shall defend Licensor, its directors, officers, employees and agents, and the premises Landlord, against all claims, actions, and proceedings arising out of actual or alleged injury to or death of any person or loss of or damage to property upon the Entire Tract, including the personnel or property of Licensor, its directors, officers, employees, agents, invitees, licensees or others arising from the acts or omissions of Licensee, its employees, agents, invitees or guests.
- (b) To the extent permitted by law Licensee shall indemnify Licensor, its directors, officers, employees and agents and the premises, and the Landlord, against all claims, actions, losses, damages, costs, expenses and liabilities, arising out of actual or alleged injury to or death of any person or loss of or damage to property upon the Entire Tract,

including the personnel and property of Licensor, its directors, officers, employees, agents, invitees, licensees or others, arising from (a) the acts or omissions of Licensee, its employees, agents, invitees or guests or (b) the fitness, merchantability, warranties, representations or defects or any other claims regarding or involving the products or services sold, offered or provided at the Premises, including any products liability or breach of express or implied warranty claims, including those caused by the negligent acts or omissions of Licensor, but excluding those found by final and not appealable judgment to have been caused solely by Licensor's negligence or willful misconduct.

13. **Licensee's Personnel.** Licensee and Licensor are independent contractors. Licensee has exclusive control over its personnel, its labor and employee relations and its policies relating to wages, hours, working conditions and other employment conditions. Licensee has the exclusive right to hire, transfer, suspend, lay off, recall, promote, discipline, discharge and adjust grievances with its personnel. At any time, however, Licensor may require Licensee to remove from the Premises any personnel objectionable to Licensor for any lawful reason. All of Licensee's personnel must be neat, clean and appropriately dressed, and obey Licensor's rules and policies while on the Premises.
14. **Assignment.** Licensee may not assign this Agreement or further license the use of any part of the Premises without Licensor's consent, which Licensor may withhold in its discretion. Any attempted assignment in violation of this Agreement is void.
15. **Governing Law.** This Agreement is governed by Iowa law, excluding its conflicts of law rules. Licensee irrevocably submits to, and waives objection to, venue and exclusive personal jurisdiction in the federal and state courts in Scott County, Iowa for any dispute arising out of this Agreement.
16. **Notices.** Notices under this Agreement must be in writing and delivered by nationally recognized overnight courier service, certified mail (return receipt requested), facsimile with electronic confirmation, or personal delivery to the party's address stated at the top of this Agreement. Notice is effective: (i) when delivered personally, (ii) when received by certified mail, (iii) when delivered by a nationally recognized courier service, or (iv) on the business day following receipt of a facsimile with electronic confirmation to the sender.
17. **Severability.** If any provision of this Agreement is determined to be unenforceable, the parties intend that this Agreement be enforced as if the unenforceable provisions were not present and that any partially valid

and enforceable provisions be enforced to the extent that they are enforceable.

18. **No Waiver.** A party does not waive any right under this Agreement by failing to insist on compliance with any of its terms or by failing to exercise any of its rights. A waiver hereunder is effective as to subsequent breaches or other terms only when the waiving party so states in writing.
19. **Cumulative Rights.** The rights and remedies of the parties under this Agreement are cumulative, and either party may enforce any of its rights or remedies under this Agreement or other rights and remedies available to it at law or in equity.
20. **Construction.** The Section headings of this Agreement are for convenience only and have no interpretive value. In this Agreement, defined terms include the plural as well as the singular, and references to “include” and its derivatives (including, “e.g.”) mean “including but not limited to”. This Agreement may be executed in counterparts, which together constitute a single agreement.
21. **Survival.** Any provision of this Agreement will survive termination or expiration to the extent necessary to give full effect to its terms.
22. **Injunctive Relief.** Licensee acknowledges that any material breach of this Agreement by Licensee would

cause Licensor irreparable harm for which Licensor has no adequate remedies at law. In that case, Licensor is entitled to specific performance of this Agreement or injunctive relief. Licensee waives all claims for damages for wrongful issuance of an injunction and acknowledges that its only remedy in that case is to dissolve that injunction.

23. **Costs and Legal Fees.**
24. **Limitations on Liability.** Licensor is not liable under any circumstances for consequential, special, punitive or indirect damages of any kind.
25. **Entire Agreement.** This Agreement, with all exhibits and schedules, which are incorporated by this reference, constitute the complete and final agreement of the parties pertaining to the Premises and supersede the parties’ prior agreements, understandings and discussions relating to the Premises. No modification of this Agreement is binding unless it is in writing and signed by Licensor and Licensee.
26. **No Alterations.** Licensee represents and warrants that this Agreement, as signed by its representative, contains no alterations or modifications from the version most recently transmitted (electronically or otherwise) by Transform SHC Licensed Business, LLC.

Disability Access Guidelines

The Americans with Disabilities Act and its supporting regulations and guidelines (“ADA”), as well as analogous state and local laws, impose affirmative obligations on retailers (including Company and Licensee) to make their products and services equally available to persons with disabilities. Among other things, this means that retailers must avoid erecting physical barriers to access, make reasonable efforts to remove any such barriers, and reasonably modify their practices and procedures if modifications will allow access to persons with disabilities.

Physical Barriers to Access

Licensee must meet all of the requirements of the ADA and other disability laws. Some requirements that may arise in the Licensed Business Area include, but are not limited to:

- Maintain at least 36 inches width in the path of travel to, from and within the Licensed Business Area. This also means that objects placed in the Licensed Business Area should not obstruct a minimum 36-inch path of travel for disabled customers in the portion of the Company store next to the Licensed Business Area.

- Maintain adequate clear floor space to, from and within the Licensed Business Area to allow for wheelchair maneuvering, including to allow customers using wheelchairs or scooters to roll up to sales and service counters or tables.

- Maintain a sales counter at which transactions are made that is at least 36 inches long, no more than 34 inches high, and deep enough to allow a disabled customer to sign for a purchase or otherwise transact business on the counter top.

- Seating at tables at which goods or services are displayed, demonstrated or sold must have knee clearance under the table that is at least 27 inches high, 30 inches wide, and 19 inches deep. Table tops must be from 28 to 34 inches high.

- Place merchandise and other items for use by disabled customers so that disabled customers can reach them by a forward or side reach from a seated position in their wheelchairs. If there is adequate maneuvering room for merchandise or other items to be approached from the side, the items must be placed no lower than 9 inches and no higher than 48 inches above the floor. If only a forward approach is available, the items must be placed no lower than 15 inches and no higher than 48 inches above the floor.

Reasonable Modifications of Practices and Procedures

Licensee may also need to use different practices and procedures from those that it uses with other customers in order to accommodate customers with disabilities. Here is a partial list of examples of modifications that Licensee may need to make under the ADA and analogous laws:

- Assisting disabled customers in reaching for or demonstrating use of merchandise.

- Exchanging written notes to allow for dialogue with deaf, hard of hearing or mute customers. In those customer interactions that typically require more extensive dialogue with customers, Licensee may need to provide a certified sign language interpreter, at its own expense and without passing on that expense to the disabled customer.

- Reading aloud from product labels or descriptions for blind or sight-impaired customers.

- Counting out different denominations of currency when making change for blind or sight-impaired customers.

- Keeping aisles and other paths of travel free from temporary barriers or merchandise.

For help in understanding the requirements set forth above and for more details on Licensee’s full obligations under the ADA and analogous state and local laws, please consult with counsel or disability access experts.

Schedule A

APPROVED STORE LOCATION(S)

<u>STORE #</u>	<u>CITY/STATE</u>	<u>FEE</u>
#2760	Davenport, IA (Vacant Sears Retail Store)	\$4,214.00/month Beginning January, 2021

Note: The following plans will be attached to this agreement:

- Site plan reflecting traffic flow in parking lot
- Building blue print marked to indicate space allocated to Scott County

THE COUNTY AUDITOR'S SIGNATURE CERTIFIES
THAT THIS RESOLUTION HAS BEEN FORMALLY
APPROVED BY THE BOARD OF SUPERVISORS ON

DATE

SCOTT COUNTY AUDITOR

R E S O L U T I O N

SCOTT COUNTY BOARD OF SUPERVISORS

DECEMBER 22, 2020

APPROVING SHORT TERM EVENT AND PARKING LOT LICENSE AGREEMENT

BE IT RESOLVED BY the Scott County Board of Supervisors as follows:

Section 1. Scott County is in support of Short Term Event and Parking Lot License agreement for the Scott County Health Department and Scott County Emergency Management Agency to conduct preparation, storage, and distribution of COVID-19 vaccinations.

Section 2. The fee for the event and lot license shall be \$4,214.00 per month to cover the equivalent of utilities.

Section 3. The Assistant County Administrator is authorized to sign the contract amendment between Scott County and Transform SHC Licensed Business LLC.

Section 4. This resolution shall take effect immediately.