



Michael R. Pence
Governor

Jerome M. Adams, MD, MPH
State Health Commissioner

CERTIFIED MAIL #7009-2820-0003-8637-9691

April 1, 2016

William Lehn, Director of Food & Beverage
Hardball Capital dba Fort Wayne TinCaps
1301 Ewing Street
Fort Wayne, IN 46802

RE: Variance Request # 902015

Order to Approve a Variance

You are hereby notified that based on the recommendation of the Indiana State Department of Health (ISDH) Food Protection Program, and as authorized by Indiana Code (IC) 16-19-3-4.3 and IC 16-42-5-5.2, the State Health Commissioner hereby orders that a variance be approved to Bill Lehn, Director of Food & Beverage representing Hardball Capital dba Fort Wayne TinCaps.

On November 23, 2015, this office received a request from you representing Hardball Capital dba Fort Wayne TinCaps to vary sections of 410 IAC 7-24, "Retail Food Establishment Sanitation Requirements," relating to regular food preparation and service in an outdoor environment, including sections 339, 402, 404, and 414.

In-person meetings occurred on January 7 and February 9, 2016 to share information on the extent of the request. These meetings involved members of your company, Allen County Health Department (ACHD), a representative of the ISDH Food Protection Program, individuals from the design and construction teams, and others. Additionally, several email exchanges of information have occurred.

This **VARIANCE APPROVAL** is based on the following criteria:

- The subject location of this variance approval is:

The 400 Club Upper Deck, located in centerfield of Parkview Field, Fort Wayne, Indiana.

- An early question involving the flow-through-drainage feature of the proposed floor/current roof drainage system for the new 400 Club Upper Deck area was discussed by the Variance Review Committee with a resulting decision that the floor should be constructed as designed, provided that any future health hazards or nuisances attributed to this feature will be readily corrected. Also, the attached standard operating procedure (SOP) and log sheet for Cleaning/Pest Control for the "Summit" will be used as is specified in that document.



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To promote and provide
essential public health services.

- Plumbing items related to the food operations shall be installed, maintained and used according to attached architectural drawings and SOPs.
- Several standard operating procedures (SOPs) were submitted along with the variance request application. These SOPs were modified and re-submitted on March 17, 2016. See attached. Completed attached forms shall be used to reflect the exercise of these SOPs. These completed forms shall be retained in paper or electronic format for at least two years from last date on each completed form to allow the ACHD to determine that provisions of this variance have been met.
- Attached is a menu of food items to be served in 400 Club Upper Deck area. There shall be no modification of this menu to the extent that such modification would include the adding or deleting of equipment in the 400 Club Upper Deck area. Nominal modifications of the menu within the capacities of the submitted equipment are acceptable.
- As agreed, a certified food handler, as described in 410 IAC 7-22, will be on duty during all periods when the 400 Club Upper Deck area is in operation.
- ACHD and ISDH Food Protection Program shall be notified of any substantive changes in the production process that may affect the conditions and criteria in this variance
- This variance does not extend to locations not described above.
- Hardball Capital dba Fort Wayne TinCaps shall comply in all aspects of the 410 IAC 7-24, as determined by ISDH and/or ACHD, except as stated above. Any change to the management or structure of the operation could invalidate this Variance Order.
- This Variance Order is limited to Hardball Capital dba Fort Wayne TinCaps and the current scope of the existing operations as indicated in submitted materials. This Variance Order is not transferable to a new owner.
- Modifications to this variance may be made by submitting a request in writing to the ISDH Food Protection Program.
- This Variance Order is limited to being in compliance with all other applicable state and local regulations.
- Retail Food Establishment Sanitation Requirements, 410 IAC 7-24-339 is hereby not varied, since that section refers to a law and/or rule of another Indiana government agency. ISDH does not have authority to vary such laws and/or rules.
- Any provisions not adhered to may result in the revocation of this order.
- Some of the submitted materials may be considered confidential or proprietary for Hardball Capital dba Fort Wayne TinCaps. It is a condition of this approval that Hardball Capital dba Fort Wayne TinCaps agrees to allow copying and transmittal of submitted materials to Indiana food regulatory authorities for regulatory purposes.

If you wish to request an administrative review or stay of effectiveness of this decision pursuant to Ind. Code §40-21.5-3-7(a), you must petition for such review in writing. The petition must state facts demonstrating that:

- a. you are a person to whom the decision is specifically directed;
- b. you are aggrieved or adversely affected by the decision; or,
- c. you are entitled to review under any law.

Your request for review or stay of effectiveness must be filed in writing and addressed to:

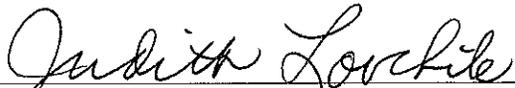
**Indiana State Department of Health
Attn: Court Administrator
Office of Legal Affairs
2 North Meridian Street, Section 3H
Indianapolis, Indiana 46204**

on or before May 1, 2016. If no request for review or stay of effectiveness is filed by May 1, 2016, this decision shall become final.

DATED AT INDIANAPOLIS, INDIANA THIS 1st DAY OF APRIL 2016.

PURSUANT TO IC 16-19-3-4.3 AND IC 16-42-5-5.2, I HEREBY APPROVE A VARIANCE OF FOOD PROTECTION RULES AS STATED ABOVE.

JEROME M. ADAMS, MD, MPH
STATE HEALTH COMMISSIONER

By: 
Judith Lovchik, PhD, D(ABMM)
Assistant Commissioner
Public Health Protection and Laboratory Services Commission

cc: ISDH Executive Board
ISDH Food Protection Staff
ISDH Office of Legal Affairs
Allen County Health Department