

Last Updated: January 4, 2021.

Website and Application Terms of Use

1. **Scope of Use.** Ocean Club Community Association, Inc. ("OCCA") provides this mobile application (The Ocean Club Key Biscayne) (the "**App**") and website (www.oceanclubkeybiscayne.org) (the "**Site**", and collectively with the App, the "**Electronic Platforms**") to you, the user of the Electronic Platforms ("**you**" or "**your**"), for your informational, noncommercial use, and subject to the following General Terms of Use (these "**Terms**"). For the purpose of the following Terms, references to "**we**", "**us**" and "**our**" include OCCA and its affiliates, subsidiaries, agents, representatives, successors and assigns. Using the Electronic Platforms to evaluate whether to enter into a business relationship with us will not constitute a commercial use for the purposes hereof. It is a violation of these Terms for you to use the Electronic Platforms in violation of any applicable laws and regulations or in violation of the rules of any of our service providers. Certain other programs or services provided by us through linked websites or other channels may have additional terms and conditions regarding your use of those services, and nothing in these Terms is intended to modify such terms and conditions. Subject your compliance with these Terms and all applicable international, federal, state and local laws, rules, and regulations, we grant you a limited, revocable, nonexclusive, non-sublicenseable, non-transferable, license to use the Electronic Platforms solely for your own personal use and not for republication, distribution, assignment, sublicense, sale, preparation of derivative works, or other use. You may only access and use the App on devices that you own or control, and you may not use the App on devices where you do not have all necessary permissions and rights to use the App. You acknowledge that these Terms are concluded between you and us only, and not Apple Inc. or Google LLC (collectively, the "**App Providers**"). YOU MAY NOT USE THE ELECTRONIC PLATFORMS IF YOU DO NOT AGREE TO THESE TERMS.

2. **Modifications.** We reserve the right to modify the Electronic Platforms and the rules and regulations governing its use at any time, including, without limitation, these Terms. Modifications will be posted on the Electronic Platforms and the "Last Updated" date at the top of this webpage will be revised. You understand and agree that if you use the App after the date on which the Terms have changed, we will treat your use as acceptance of the updated Terms. We may make changes in the services described in the Electronic Platforms at any time without prior notice to you.

3. **Restrictions on Use.** You will not use the Electronic Platforms for any use other than the business purpose for which it was intended. You will not, and will not permit any third party to, take any of the following actions with respect to the Electronic Platforms or the server hosting the Electronic Platforms nor will you use our Electronic Platforms to upload, post, email, distribute, transmit, link, solicit or otherwise make available any content or use the App in any manner that: (i) uploads or transmits any unsolicited advertising, promotional materials, "junk mail", "spam", "chain letters", "pyramid schemes", or any other form of solicitation, commercial or otherwise; (ii) decompiles, uses reverse engineering, disassembles, derives the source code of or decrypts the Electronic Platforms or server hosting the Electronic Platforms; (iii) manipulates or otherwise displays the App by using framing, mirroring or similar navigational technology or directly links to any portion of the Electronic Platforms; (iv) uses any robot, spider, scraper or other automatic or manual means to access the Electronic Platforms or copies any content or information on the Electronic Platforms; (v) removes, obscures, or alters any proprietary notices (including any notice of copyright or trademark) of us or our affiliates, partners, suppliers or our licensors; (vi) modifies, adapts, improves, enhances or makes any derivative work from the App; (vii) disables, overburdens, impairs or otherwise interferes with or interrupts the Electronic Platforms or any hardware, software, system or network connected with the Electronic Platforms; (viii) probes, scans, or tests the vulnerability of or breaches the authentication measures of the Electronic Platforms or any related networks or systems; (ix) interferes with any other party's use and enjoyment of the Electronic Platforms; (x) infringes the copyright, trademark or any proprietary rights or discloses a trade secret or confidential information in violation of a confidentiality or non-disclosure agreement; (xi) compiles, uses, downloads or otherwise copies any user information or any portion thereof, or transmits, provides or otherwise distributes (whether or not for a fee) such information to any third party; (xii) is fraudulent, malicious or unlawful, unauthorized or contains defamatory or illegal information, images, materials or descriptions; (xiii) promotes or provides instructions for illegal activities; (xiv) encourages any conduct that would constitute a criminal offense or that gives rise to civil liability; (xv) disseminates viruses or other computer code, files or programs that interrupt, destroy or limit the functionality of any computer software or hardware; (xvi) attempts to gain unauthorized access to any other accounts, computer systems or networks connected to any server or systems through hacking, password mining or any other means; or (xvii) accesses systems, data or information that we do not intend to be made accessible to you. Use of the Electronic Platforms is limited to persons thirteen (13) years of age or older.

4. **Privacy Policy.** You may view a copy of our privacy policy here [\[insert privacy policy hyper link\]](#) ("**Privacy Policy**"), which explains our practices relating to the collection and use of your information through or in connection with our Electronic Platforms. The Privacy Policy is incorporated into these Terms and governs our use of your information and/or any information you submit or otherwise make available to us in connection with the Electronic Platforms.

5. **Registration, Access & Security.** If you use any of our services or provide us any information through the Electronic Platforms, such as, but not limited to, your name, birth date, age, criminal history, bank account information, credit card information, address, zip code, phone number, contact details, email address, and/or your password (collectively, your "**Account Data**") for any accounts associated with you (your "**Account(s)**"), you agree to provide true, accurate, current, complete and up-to-date information. If you provide any information that is untrue, inaccurate, non-current or incomplete, or we have reasonable grounds to suspect that such information is untrue, inaccurate, non-current or incomplete, then we have the right to terminate or refuse any and all current or future access or use of the Electronic Platforms (or any portion thereof). We reserve the right to take any action that we deem necessary to ensure the security of the Electronic Platforms and your Account, including without limitation changing your password, terminating your Account, or requesting additional information to authorize transactions on your Account. You are solely responsible for keeping your Account Data and any security questions and responses associated with your Account confidential. Anyone with knowledge of or access to your Account Data or the security questions and responses associated with your Account

Comment [WM1]: OCCA: Are we limiting the services to people of a certain age? 18?

Comment [ID2]: There is no age limit

Comment [NM3]: We recommend limiting to at least 13+. Collecting data of children under 13 will impose a number of notice and compliance obligations on OCCA.

Comment [NM4]: Note to include hyperlink when uploaded.

can use that information to gain access to your Account. You are solely liable for any claims, damages, losses, costs or other liabilities resulting from or caused by any failure to keep your Account Data and the security questions and responses confidential, whether such failure occurs with or without your knowledge or consent. You will immediately notify us of any suspected or actual unauthorized access to or use of your Account Data or any other breach of your Account security.

You are responsible for providing and maintaining, at your own risk, option and expense, any hardware, software and communication lines required to access and use the App, and we reserve the right to change the access configuration of the App at any time without prior notice.

6. No Warranties. THE ELECTRONIC PLATFORMS AND ALL MATERIALS ON THE ELECTRONIC PLATFORMS ARE PROVIDED TO YOU ON AN "AS-IS," "AS-AVAILABLE" BASIS, AND WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WE MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY OR RELIABILITY OF THE ELECTRONIC PLATFORMS OR ANY SERVICES, PRODUCTS, INFORMATION, OPINIONS, AND MATERIALS AVAILABLE THROUGH THE ELECTRONIC PLATFORMS. YOU ARE RESPONSIBLE FOR VERIFYING ANY INFORMATION YOU OBTAIN FROM THE ELECTRONIC PLATFORMS BEFORE RELYING ON IT. USE OF THE ELECTRONIC PLATFORMS IS AT YOUR SOLE RISK. WE MAKE NO REPRESENTATIONS OR WARRANTIES THAT USE OF THE ELECTRONIC PLATFORMS OR THE MATERIALS PROVIDED THROUGH THE ELECTRONIC PLATFORMS WILL BE UNINTERRUPTED, COMPLETELY SECURE, VIRUS-FREE, OR ERROR-FREE. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 12 BELOW, YOUR SOLE AND EXCLUSIVE REMEDY RELATING TO YOUR USE OF THE ELECTRONIC PLATFORMS SHALL BE TO DISCONTINUE USING THE ELECTRONIC PLATFORMS. YOU ACKNOWLEDGE THAT, TO MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE APP PROVIDERS PROVIDE NO WARRANTY OR REPRESENTATION REGARDING THE ELECTRONIC PLATFORMS.

7. Trademarks. All trademarks, service marks and logos that are used or displayed on the Apps are owned by us or our licensors. You must obtain our written permission prior to using any trademark or service mark of ours. Unauthorized use of any trademarks, service marks or logos used on the Electronic Platforms may be a violation of state, national and international trademark laws. Additionally, our custom icons, graphics, logos and scripting on the Electronic Platforms may be covered by trademark, trade dress, copyright or other proprietary right law, and may not be copied, modified or used, in whole or in part, without our prior written permission.

8. Reviews, Comments and Other Content. If you post or submit any reviews, comments, photos, statements, ideas, questions or other content, or any names or user names associated with any of the foregoing, to the Electronic Platforms or to us (collectively, the "**Content**"), you acknowledge and agree that all such Content will comply with these Terms (including, without limitation, Section 3 above), and you may not use any fake e-mail address or impersonate any other person or entity or otherwise mislead as to the origin of the Content. Unless we indicate otherwise, you grant us an irrevocable, perpetual, fully paid up, royalty-free, enterprise wide, worldwide license to copy, modify, sell, create derivative works from, or otherwise use the Content on any media and in any form for our business purposes. You represent and warrant that all Content that you submit or post complies with any applicable guidelines or rules of the United States Federal Trade Commission, including but not limited to FTC 16 CFR Part 255, regarding truth-in advertising and disclosure requirements. You represent and warrant that all Content you submit to the App or us is accurate, truthful and non-deceptive and that all Content has evidence to back up the claims made.

9. Violation of Rules and Regulations; Disclosure of Information. We reserve the right to seek all remedies available at law and in equity for violations of the rules and regulations set forth in the Electronic Platforms including, without limitation, these Terms, including the right to block access from a particular Internet address to the Electronic Platforms. We may cooperate with legal authorities and/or third parties in the investigation of any suspected or alleged crime or civil wrong. Except as may be expressly limited by the Privacy Policy, we reserve the right at all times to: (i) disclose any information as we deem necessary to satisfy any applicable law, regulation, legal process or governmental request; or (ii) edit, refuse to post or to remove any information or materials, in whole or in part, as applicable, in our sole discretion.

10. Indemnity. You agree to indemnify, defend, and hold us and our subsidiaries, affiliates, officers, agents, employees, contractors, partners and licensors harmless from and against any and all suits, actions, losses, claims, proceedings, demands, expenses, damages, settlements, judgments, injuries, liabilities, obligations, risks, and costs, including, without limitation, reasonable attorneys' fees, due to, relating to, or arising out of: (i) your use of the App; (ii) your violation of these Terms; (iii) any Content you provide; (iv) your negligence, fraud, or willful misconduct; (v) your Account; and/or (vi) your violation of any law or regulation or any rights of another. We reserve the right, at your expense, to assume the exclusive defense and control of any matter which you are required to indemnify against, and you agree to cooperate in our defense of such matter. This indemnification will survive any termination of these Terms.

11. Limitation of Liability. YOU UNDERSTAND AND AGREE THAT WE WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR SPECIAL DAMAGES, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ACCESS TO OR USE OF THE ELECTRONIC PLATFORMS, INCLUDING, WITHOUT LIMITATION, ANY MATERIALS, SERVICES AND/OR PRODUCTS WE HAVE PROVIDED TO YOU ON OR THROUGH THE ELECTRONIC PLATFORMS, WHETHER OR NOT YOU HAVE PURCHASED OR PROVIDED ANY CONSIDERATION FOR SUCH, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING BUT NOT LIMITED TO: (A) ANY ACTION TAKEN IN CONNECTION WITH AN

INVESTIGATION BY LAW ENFORCEMENT AUTHORITIES REGARDING YOUR OR ANY OTHER PARTY'S USE OF THE ELECTRONIC PLATFORMS; (B) ANY ACTION TAKEN IN CONNECTION WITH COPYRIGHT OR OTHER INTELLECTUAL PROPERTY OWNERS; (C) ANY DAMAGE TO ANY USER'S COMPUTER, MOBILE DEVICE, OR OTHER EQUIPMENT OR TECHNOLOGY; (D) RELIANCE BY ANY PARTY ON ANY CONTENT OBTAINED THROUGH USE OF THE ELECTRONIC PLATFORMS; OR (E) WHETHER CAUSED IN WHOLE OR IN PART BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS FAILURE, THEFT OR DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO THE ELECTRONIC PLATFORMS, OR RELATED INFORMATION OR PROGRAMS, THAT ARISE IN CONNECTION WITH: (1) MISTAKES OR OMISSIONS IN, OR DELAYS IN TRANSMISSION OF, INFORMATION TO OR FROM THE USER; (2) INTERRUPTIONS IN TELECOMMUNICATIONS CONNECTIONS TO THE ELECTRONIC PLATFORMS; OR (3) VIRUSES.

OUR TOTAL LIABILITY TO YOU FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES WILL BE LIMITED TO THE AMOUNT YOU HAVE PAID FOR THE USE OF THE APP, IF ANY, AND IF YOU HAVE PAID NO AMOUNT, THEN FIFTY UNITED STATES DOLLARS (\$50.00). YOU ALSO ACKNOWLEDGE AND AGREE THAT YOU HAVE VIEWED OR USED THE ELECTRONIC PLATFORMS WITH A FULL UNDERSTANDING OF THE LIMITATION OF OUR LIABILITY IN THESE TERMS.

BY ACCESSING THE ELECTRONIC PLATFORMS, YOU UNDERSTAND THAT YOU MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE AT THIS TIME UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND ANY SIMILAR LAW OF ANY STATE OR TERRITORY, WHICH PROVIDES AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Some jurisdictions do not allow exclusions of liability for certain types of damages. Accordingly, some of the above limitations may not apply to you to the extent prohibited by law. In such cases, our liability will be limited to the fullest extent permitted by applicable law.

12. Third Party Sites and Apps. Some links in the Electronic Platforms may navigate you away from the Electronic Platforms or redirect you to other websites, including websites operated by third parties. The linked third party websites are not under our control, and the content available on the linked third party websites does not necessarily reflect our opinion or imply our recommendation or endorsement of the linked third party website or the opinions expressed therein. We are not responsible for the privacy practices of any other websites. Please be aware that those websites may collect personally identifiable information ("PII") from or about you as well as non-PII about your visit. You should review the terms of use and privacy policies that are posted on any website that you visit before using any linked websites.

We are providing these links to other Internet sites as a convenience to you, and access to any other Internet sites linked to the Electronic Platforms is at your own risk. We are under no obligation to maintain any link on the Electronic Platforms, and we may remove a link at any time in our sole discretion for any reason whatsoever. We will not be responsible or liable, directly or indirectly, for any damages or losses caused or alleged to be caused by or in connection with the use of or reliance on such content, products, services or other materials available on or through any such website or for any action you may take as a result of linking to any such website.

13. No Fiduciary Relationship. Except to the extent set forth in a separate agreement between you and us, there is no fiduciary relationship between you and us. These Terms do not create any relationship of principal and agent, partnership, joint venture, or employer and employee, between you and us. You may not enter into any contract on our behalf or bind us in any way.

14. Right to Monitor. We reserve the right to actively monitor the use of the Electronic Platforms and use any information gathered during such monitoring for any permissible purpose under the Privacy Policy. Additionally, we may, at any time as we deem appropriate, remove any materials from the App that, in our sole discretion and judgment, may be illegal, may subject us to liability, may violate these Terms, or are, in our sole discretion, inconsistent with our purpose for the Electronic Platforms.

15. Electronic Communications and Notice. When you visit the Electronic Platforms or send e-mails to us, you are communicating with us electronically, and you consent to receive communications from us electronically. We will communicate with you by e-mail at the address we have on file for you (if any), by sending you messages through the mobile application we provide, or by posting notices on the Electronic Platforms. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. You further agree that any notices provided by us electronically are deemed to be given and received on the date we transmit any such electronic communication as described in these Terms.

All notices to us required or permitted under these Terms must be in writing and sent by certified mail, return receipt requested, or by reputable overnight courier, or by hand delivery, provided that we may provide written notice to you through electronic communications as described in the paragraph immediately above. The notice address for OCCA is 795 Crandon Blvd., Key Biscayne, FL 33149. Any notice sent in the manner set forth above shall be deemed sufficiently given for all purposes hereunder (i) in the case of certified mail, on the second business day after deposited in the U.S. mail, and (ii) in the case of overnight courier or hand delivery, upon delivery. We may change our notice address by giving written notice to you by the means specified in this Section.

16. Use Outside of the United States; Choice of Law; and Venue. The Electronic Platforms are operated by us from our

offices within the United States of America and are intended for use solely within the United States. We make no representation that the information in the Electronic Platforms are appropriate or available for use in other locations, and access to the Electronic Platforms from territories where the contents of the Electronic Platforms may be illegal is prohibited. Those who choose to access the Electronic Platforms from other locations do so on their own initiative and are responsible for compliance with applicable local laws. You represent and warrant that: (a) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (b) you are not listed on any U.S. Government list of prohibited or restricted parties. By using the Electronic Platforms, regardless of where you live or are located in the world, you consent to these Terms and any claims relating to the information, services or products made available through the Electronic Platforms will be governed by the laws of the State of Florida, U.S.A., excluding the application of its conflicts of law rules. You agree that venue for all actions, relating in any manner to these Terms, will be in a federal or state court of competent jurisdiction located in Miami-Dade County, Florida.

17. Time Limit on Claims Against us. You agree that any claim you may have arising out of or related to your use of the Electronic Platforms or your relationship with us must be filed within one (1) year after such claim arose; otherwise, your claim is permanently barred.

18. Severability and Waiver. If any provision of these Terms will be deemed unlawful, void, or for any reason unenforceable, then that provision will be deemed severable from these Terms and will not affect the validity and enforceability of any remaining provisions. Our failure to enforce the strict performance of any provision of these Terms will not constitute a waiver of our right to subsequently enforce such provision or any other provisions of these Terms.

19. Assignment. We may assign these Terms or any part of them without restriction or condition. You may not assign or otherwise transfer these Term or your rights under these Terms without our prior written consent and any assignment in violation of this prohibition will be null and void.

20. Our Remedies. You agree that any violation, or threatened violation, by you of these Terms constitutes an unlawful and unfair business practice that will cause us irreparable and unquantifiable harm. You also agree that monetary damages would be inadequate for such harm and consent to our obtaining any injunctive or equitable relief that we deem necessary or appropriate. These remedies are in addition to any other remedies we may have at law or in equity.

21. App Provider Terms. The following terms apply to any App accessed through or downloaded from any App Provider. You acknowledge and agree that:

- (i) These Terms are concluded between you and OCCA, and not with the App Provider, and that OCCA (not the App Provider), is solely responsible for the App.
- (ii) To the extent you obtain an App from the Apple App Store, any licenses granted hereunder for the use of the App are limited to a license to use the App on any Apple-Platformed Products that you own or control and as permitted by the Usage Rules set forth in the App Store Terms of Service, except that the App may be accessed and used by other accounts associated with you via family sharing or volume purchasing.
- (iii) Unless expressly stated otherwise in writing by the App Provider, the App Provider has no obligation to furnish any maintenance and support services with respect to the App.
- (iv) You may notify the App Provider in the event of any failure of the App to conform to any applicable warranty, and the App Provider will refund the purchase price for the App to you (if applicable) and to the maximum extent permitted by applicable law, the App Provider will have no other warranty obligation whatsoever with respect to the App. To the extent that OCCA is not the App Provider, any claims, losses, liabilities, damages, costs or expenses other than the purchase price attributable to any failure to conform to any warranty will be the sole responsibility of OCCA in accordance with these Terms.
- (v) The App Provider is not responsible for addressing any claims you have or any claims of any third party relating to the App or your possession and use of the App, including, but not limited to: (A) product liability claims; (B) any claim that the App fails to conform to any applicable legal or regulatory requirement; or (C) claims arising under consumer protection or similar legislation.
- (vi) In the event of any third party claim that the App or your possession and use of that App infringes that third party's intellectual property rights, OCCA, and not App Provider, will be solely responsible for the investigation, defense, settlement, and discharge of any such intellectual property infringement claim to the extent required by these Terms.
- (vii) You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.
- (viii) You must also comply with all applicable third party terms of service when using the App.
- (ix) The App Provider, and its subsidiaries, are third party beneficiaries of these Terms as related to your license of the App, and that, upon your acceptance of the terms and conditions of these Terms, the App Provider will have the right (and will be deemed to have accepted the right) to enforce these Terms as related to your license of the App against you as a third party beneficiary thereof.
- (x) You further agree to comply with the App Providers' terms and conditions: (a) Apple Media Services Terms and

Conditions (available at: <https://www.apple.com/legal/internet-services/itunes/us/terms.html>); and (b) Google Play Terms of Service (available at: <https://play.google.com/about/play-terms/index.html>), which are incorporated herein and made a part of these Terms by this reference.

22. How to Contact Us. If you have any questions regarding the Electronic Platforms, these Terms, please contact at us at the information provided in our Privacy Policy, available here: [\[insert hyperlink to privacy policy\]](#).