

**Exhibit “5”**

**[Form Drainage Easement Agreement]**

**Prepared by and return to:**

S. Denay Brown, Esq.  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
106 E. College Avenue, Suite 720  
Tallahassee, FL 32301

Property Appraiser's Parcel ID (Folio)  
Number(s): portion of \_\_\_\_\_

-----SPACE ABOVE THIS LINE RESERVED FOR RECORDING DATA-----

**DRAINAGE EASEMENT AGREEMENT**

THIS DRAINAGE EASEMENT AGREEMENT (this “**Easement Agreement**”) is granted this \_\_\_\_ day of \_\_\_\_\_, 2026, by and between ON TOP OF THE WORLD COMMUNITIES, L.L.C., a Florida limited liability company, whose address is 8445 SW 80TH STREET, OCALA, FL 34481 (“**OTOW**”), to and for the benefit of MARION COUNTY, a political subdivision of the State of Florida, whose address is 601 SE 25<sup>th</sup> AVE., OCALA, FLORIDA 34471 (“**County**”). OTOW and County may each be referred to as a “**Party**” and may be collectively referred to herein as the “**Parties.**”

**RECITALS**

A. OTOW is the owner of that certain parcel of real property, as more particularly described on **Exhibit A**, attached hereto and incorporated herein by this reference (the “**Easement Area**”).

B. OTOW desires to grant unto County for the benefit of County, and County desires to accept, a non-exclusive easement on, over, across, upon, and through the Easement Area for the purposes stated herein.

NOW, THEREFORE, in consideration of the premises, agreements, and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals; Exhibits.** The foregoing recitals are true and correct and, together with all Exhibits attached hereto, are incorporated into and form a part of this Easement Agreement. As used herein, the term “**Permittees**” shall mean all tenants, contractors, subcontractors, managers, partners, officers, directors, employees, agents, customers, vendors, guests, licensees, suppliers, visitors, invitees, subtenants, and concessionaires of County, insofar as their activities relate to the use of the Easement Area.

2. Grant of Non-Exclusive Easement. OTOW hereby creates, grants, declares, and conveys to County and its Permittees (collectively, the “**County Parties**”), a perpetual, non-exclusive drainage easement on, over, across, upon, and through the Easement Area for the transfer, control, and impounding of stormwater and for the construction, installation, maintenance, repair, replacement, and operation of devices, improvements, or systems related thereto, including but not limited to swales, retention and detention areas, water management areas, ditches, culverts, and impoundments (“**Drainage Improvements**”). It is understood and agreed that the foregoing easement is non-exclusive and OTOW reserves the right for itself, and its respective successors, assigns, and designated users, to utilize the Easement Area for any purpose not inconsistent with the uses granted to County hereunder.

3. Easement Area Capacity and Allocation of Same. **[NOTE TO DRAFT: The language to be included in this section of a final Easement Agreement will need to be determined on a location by location basis dependent on whether there are existing Drainage Improvements and whether the Easement Area is anticipated to be utilized initially only by the County or be shared by OTOW and County]** The Drainage Improvements shall be constructed to provide a maximum runoff capacity in an amount not to exceed \_\_\_\_\_ for use by County (“**County Capacity**”). County shall not cause or permit the Drainage Improvements to be constructed to receive or cause or permit the Drainage Improvements to actually receive more than the County Capacity. Pursuant to Paragraph 4, OTOW may, at any time, relocate, alter, or modify the Drainage Improvements and/or enlarge the Easement Area to provide additional capacity for use by OTOW. The parties shall thereafter share the overall capacity proportionately.

4. Location of Easement Area. Notwithstanding the location of the Easement Area as described or depicted on **Exhibit A**, OTOW hereby reserves unto itself, and its successors and assigns, the right to relocate, alter, or modify the Easement Area and/or Drainage Improvements, so long as such relocation, alteration, or modification does not reduce the County Capacity, and the cost of relocation, alteration, or modification is paid by OTOW. In the event OTOW desires to relocate, modify, and/or alter the location of the Easement Area, OTOW shall provide reasonable notice to County and shall obtain the required County permit. At any time following obtaining such permit, OTOW shall have the right to unilaterally execute and record an amendment to this Easement Agreement in the Public Records of Marion County, Florida, providing a new sketch and legal description depicting and describing the Easement Area as relocated, altered, or modified. Said modification shall be binding upon the County notwithstanding their lack of execution thereof. Notwithstanding the foregoing, if requested by OTOW, County shall promptly execute and deliver any documents requested confirming the modification of this Easement Agreement and the relocation, alteration, or modification of the Easement Area.

5. Construction, Repair, and Maintenance Obligations.

- (a) The Drainage Improvements shall be constructed by County in a good and workmanlike manner and in accordance with the specifications set forth herein, all applicable governmental permits and approvals, including, without limitation, any approvals or permits issued by the Southwest Florida Water Management District (“**SWFWMD**”) or the County. All such construction of the Drainage Improvements shall be at County’s sole cost and expense. County shall take all reasonable steps to ensure against any damage to the Easement Area, including,

without limitation, damage to any improvements located on the Easement Area. Notwithstanding the foregoing, in the event OTOW desires to construct the Drainage Improvements in the Easement Area prior to the County doing so, OTOW may, but shall not be obligated to, construct the Drainage Improvements and the County shall reimburse OTOW for its costs incurred associated with constructing the Drainage Improvements within forty-five (45) days of OTOW's written demand therefore.

- (b) The Drainage Improvements shall be maintained and repaired by County in a good and workmanlike manner and in accordance with the specifications set forth herein, all applicable governmental permits and approvals, including, without limitation, any approvals or permits issued by SWFWMD or the County. All such maintenance and repair of the Drainage Improvements shall be at County's sole cost and expense. County shall take all reasonable steps to ensure against any damage to the Easement Area, including, without limitation, damage to any improvements located on the Easement Area. Notwithstanding the foregoing, in the event OTOW exercises its option, pursuant to Paragraph 4, to relocate, alter, or modify the Drainage Improvements and/or enlarge the Easement Area to provide additional capacity for use by OTOW, the Drainage Improvements shall thereafter be maintained and repaired by OTOW in a good and workmanlike manner and in accordance with the specifications set forth herein, all applicable governmental permits and approvals, including, without limitation, any approvals or permits issued by SWFWMD or the County. Further, in such event, OTOW shall be solely responsible for maintaining all of the Drainage Improvements, including but not limited to all outfalls, drains, pipes, or similar materials located within the Easement Area. OTOW shall be solely responsible for all maintenance, including routine maintenance (such as mowing), repairs, and any immediate and/or corrective actions required in response to sudden and substantial malfunction, collapse (such as a sinkhole), or other failure resulting in significant flooding, property damage, or environmental harm (a "**Catastrophic Failure**"). If OTOW fails to maintain the Drainage Improvements and does not cure such failure within thirty (30) days of written notice from the County, the County may, at its discretion, perform the necessary maintenance or repairs at OTOW's expense.

6. Reservation of Rights. OTOW hereby reserves unto itself, and its successors and assigns, its employees, guests and invitees, all rights accruing from its ownership of the Easement Area, including, without limitation, the right to landscape the Easement Area to engage in or permit, invite or grant to others the right to engage in any and all uses of the Easement Area, which does not unreasonably interfere with the rights granted herein.

7. Environmental Indemnity. For so long as County is responsible for the maintenance and repair of the Drainage Improvements pursuant to Paragraph 5, County shall indemnify, defend, protect, and hold OTOW and OTOW's officers, shareholders, members, directors, partners, agents, attorneys and employees (collectively "**OTOW Parties**") harmless from and against any and all actual or potential claims, proceedings, lawsuits, liabilities, damages, losses, fines, penalties, judgments, awards, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, that arise out of or relate in any way to any use, storage,

transfer, generation, disposal, or discharge of Hazardous Materials in connection with the use of the Easement Area by the County Parties. As used in this Easement Agreement, "Hazardous Materials" means:

- (a) All substances, wastes, pollutants, contaminants, and materials now or hereafter regulated, or defined or designated as hazardous, extremely or imminently hazardous, dangerous, or toxic, under the following federal statutes and their state counterparts, as well as these statutes' implementing regulations: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. '9601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. '136 et seq.; the Atomic Energy Act of 1954, 42 U.S.C. '2011 et seq.; and the Hazardous Materials Transportation Act, 49 U.S.C. '5101 et seq.;
- (b) Any additional hazardous substances or materials that are now or become defined as "hazardous substances," "hazardous waste," "toxic substances," or "toxic waste" under any other federal law or under any state, county, municipal, or other law applicable to the Easement Area or under any regulations promulgated under any such law;
- (c) Petroleum and petroleum products including crude oil and any fractions thereof;
- (d) Asbestos; and
- (e) Natural gas, synthetic gas, and any mixtures thereof.

The Parties herein will not cause or give permission for any Hazardous Materials to be used, placed, misused or disposed of upon, above, under, or transported to or from the Easement Area in violation of any applicable law. This section shall survive the termination of this Easement Agreement.

8. OTOW's Self Help Remedy. If County fails to perform any obligation set forth in this Easement Agreement and fails to cure the non-performance of the obligation within thirty (30) calendar days after receiving written notice from OTOW (however, no notice to County shall be required in an emergency), OTOW shall have the right, but not the obligation, to perform the obligation and be reimbursed for the cost of that performance by County within thirty (30) days after receipt of a written demand thereof by OTOW. This section shall survive the termination of this Easement Agreement.

9. Indemnification by County. County will defend, indemnify and hold OTOW, its successors and assigns, harmless from and against any and all actions, causes of action, claims, demands, liabilities, losses, judgments, costs and expenses whatsoever (including, notwithstanding Paragraph 20 herein, without limitation, reasonable attorneys' fees at trial and appellate levels), arising out of or as a result of the exercise by County (or any individual or entity claiming by, through or under County), of County's rights or obligations hereunder. This section shall survive the termination of this Easement Agreement.

10. No Liens. County shall not permit (and shall promptly satisfy or bond) any construction, mechanic's lien or other lien or encumbrance against the Easement Area if such lien or encumbrance shall arise in connection with any work or materials related directly or indirectly to the exercise by County (or any individual or entity claiming by, through or under County) of its

rights or obligations hereunder. The filing of any such lien shall constitute a default by County under this Easement Agreement. This section shall survive the termination of this Easement Agreement.

11. No Waiver of Immunity. Nothing in this Easement Agreement shall be deemed as a waiver of sovereign immunity or limits of liability of either County, including their supervisors, officers, agents and employees and independent contractors, beyond any statutory limited waiver of sovereign immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, Florida Statutes, or other statute, and nothing in this Easement Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

12. Insurance Required to be Maintained by County. In connection with the rights granted by OTOW to County hereunder, County agrees to maintain or cause to be maintained in full force and effect comprehensive general liability insurance, including personal injury liability insurance and contractual liability insurance, with a financially responsible insurance company or companies licensed in the State of Florida. Such insurance shall provide for aggregate coverage of not less than One Million Dollars (\$1,000,000.00) for public liability and property damage, naming OTOW as an additional insured. Said policy shall provide for at least thirty (30) days' notice of non-payment of premiums or cancellation.

13. Subrogation. All insurance required by this Easement Agreement shall include provisions denying to the insurer subrogation rights against the other Parties to the extent such rights have been waived by the insured prior to the occurrence of damage or loss. Each Party to this Easement Agreement waives any rights against the other Party for any damage or consequential losses covered by such policies, against which such person is protected by insurance, but only to the extent of the proceeds actually paid to such person under such policies, whether or not such damage or loss shall have been caused by any acts or omissions of the other parties or its agents, employees, representatives, invitees, guests, successors or assigns.

14. No Public Dedication. This Easement Agreement shall not be construed, expressly or by implication, as a dedication to the public for public use and the Parties may, by mutual agreement, terminate or modify their respective rights and obligations hereunder without the consent of any third party.

15. Governing Law; No Venture: This Easement Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Florida and venue for any litigation arising hereunder shall be in Marion County. Nothing contained in this Easement Agreement shall be deemed or construed, either by the Parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture or other association between the Parties.

16. Notices. Except as otherwise expressly provided herein, notices may only be delivered by either (i) hand delivery (ii) by certified mail, return receipt requested, or (iii) delivery by overnight delivery service such as UPS or FedEx, to the addressee at the address set forth above, and shall be deemed to have been delivered on the date of receipt of such notice, if hand-delivered, or, if mailed on the date the receipt for which the certified mail is signed by the addressee or its

authorized agent or employee, or if sent by overnight delivery service, the day such notice is received. Either Party may change the address for notice to that Party by delivering written notice of such change in the manner provided above, such change to be effective not sooner than three (3) days after the date of notice of change, addressed as provided herein.

17. Entire Agreement. This Easement Agreement contains the entire agreement of the Parties pertaining to the subject matter hereof and there are no representations, inducements, promises or agreements, oral or otherwise, not embodied herein or in writing.

18. Binding Effect. This Easement Agreement and all conditions, obligations, and covenants granted and created herein shall be deemed covenants running with the land and shall be binding and benefit not only OTOW and County but also their assigns and successors in title.

19. Modification and Waiver. Except as otherwise expressly provided herein, this Easement Agreement may not be amended, waived, or terminated, except by an instrument in writing executed by County and OTOW, which written document shall be recorded in the Public Records of Marion County, Florida. No delay or omission in the exercise of any right accruing upon any default shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver of a breach of, or a default in, any of the terms and conditions of this Easement Agreement by a Party shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Easement Agreement.

20. Attorneys' Fees. In the event of any dispute, litigation, or other proceeding between OTOW and County to enforce any of the provisions of this Easement Agreement or any right of either OTOW or County hereunder, each Party to such dispute, litigation, or other proceeding shall pay its own costs and expenses, including reasonable attorneys' fees, incurred at trial, on appeal, and in any arbitration, administrative or other proceedings.

21. Remedies. In the event of a breach or threatened breach of any Party's obligations under this Agreement, a cause of action shall immediately accrue to the non-breaching Party and such non-breaching Party shall be entitled to pursue all remedies described in this Agreement or provided at law and equity. The Parties further agree that the waiver of a Party's breach or threatened breach of any obligations under this Agreement shall not be construed as a waiver of any subsequent breach by that Party.

22. Estoppel Certificates. OTOW and County, within ten (10) days of its receipt of a written request from the other shall, from time to time, provide the other party a certificate binding upon such Party stating: (a) to the best of the such Party's knowledge, whether any Party to this Easement Agreement is in default or violation of this Easement Agreement and if so identifying such default or violation, and (b) that this Easement Agreement is in full force and effect and identifying any amendments to this Easement Agreement as of the date of such certificate.

**23. WAIVER OF JURY TRIAL. OTOW AND COUNTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS EASEMENT AGREEMENT OR**

**ANY DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ANY ACTIONS OF EITHER OTOW OR COUNTY, ARISING OUT OF, OR RELATED IN ANY MANNER WITH, THIS EASEMENT AGREEMENT (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS EASEMENT AGREEMENT OR ANY CLAIMS OR DEFENSES ASSERTING THAT THIS EASEMENT AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR OTOW AND COUNTY TO ENTER INTO THIS EASEMENT AGREEMENT. OTOW AND COUNTY ACKNOWLEDGE THAT THIS WAIVER HAS BEEN FREELY GIVEN AFTER CONSULTATION WITH COMPETENT COUNSEL.**

24. Severability. If any provision of this Easement Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Easement Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law. It is the intention of the Parties that if any such provision is held to be illegal, invalid, or unenforceable, the parties shall negotiate in good faith to add in lieu thereof a legal, valid and enforceable provision that is as similar as possible in terms to the illegal, invalid or unenforceable provision.

25. Construction. The captions and headings in this Easement Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions, or agreements contained herein.

26. Time is of Essence. OTOW and County acknowledge time is of the essence under this Easement Agreement.

27. Drafting. Each of the Parties have participated fully in the negotiation and preparation of this Easement Agreement with full benefit of counsel. Accordingly, this Easement Agreement shall not be more strictly construed against any of the Parties, and shall be interpreted as if the Parties hereto jointly prepared it.

28. Cooperation. The Parties shall execute in good faith such other and further documents as may be required to effectuate the terms of this Easement Agreement. However, nothing herein shall be interpreted to require the County to take or abstain from taking any regulatory, legislative, or quasi-judicial action.

29. Counterparts. This Easement Agreement may be executed in counterparts. It shall be sufficient that the signatures of the persons required to bind any Party appear on one or more of such counterparts. All counterparts shall collectively constitute a single agreement.

**[Signatures on Following Page]**

IN WITNESS WHEREOF, OTOW has caused these presents to be duly executed in its name by the undersigned as of the date first above written.

**WITNESSES:**

**“OTOW”**

**ON TOP OF THE WORLD COMMUNITIES, L.L.C.**, a Florida limited liability company

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Address of Witness 1:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
By:

\_\_\_\_\_  
Its:

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Address of Witness 2:

\_\_\_\_\_

\_\_\_\_\_

STATE OF FLORIDA                    )  
COUNTY OF \_\_\_\_\_            )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_ day of \_\_\_\_\_, 2026, by \_\_\_\_\_ as \_\_\_\_\_ of ON TOP OF THE WORLD COMMUNITIES, L.L.C., a Florida limited liability company, who acknowledges that he/she executes the foregoing on behalf of the company. He/She  is personally known to me or  has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

My commission expires:\_\_\_\_\_

IN WITNESS WHEREOF, County has caused these presents to be duly executed in its name by the undersigned as of the date first above written.

**ATTEST:**

**BOARD OF COUNTY COMMISSION OF  
MARION COUNTY, FLORIDA**

\_\_\_\_\_  
Gregory C. Harrell, Clerk

By: \_\_\_\_\_  
Carl Zalak, III, Chairman

For Use of Marion County Only,  
Approved as to Form

  
\_\_\_\_\_  
Matthew G. Minter  
County Attorney

**EXHIBIT A**