

SUBCONTRACT PAYMENT BOND

Any singular reference to Principal, Surety, Obligee or other party shall be considered plural where applicable.

PRINCIPAL (SUBCONTRACTOR)
(Name and Address):

**SURETY (Name and Address of Surety
Company Office):**

OBLIGEE (CONTRACTOR)

(Name and Address):

DeAngelis Diamond Construction, LLC
6635 Willow Park Drive
Naples, FL 34109

SUBCONTRACT

Date:

Amount:

Description of Project

(Name and Location):

BOND

Date (Not Earlier than Subcontract Date): _____

Penal Amount: \$ _____

SUBCONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Signature: _____

Name & Title: _____

Witness: _____

SURETY

Company: (Corporate Seal)

Signature: _____

Name & Title: _____

Attach Power of Attorney

Witness: _____

(Any additional signatures appear on page attached)

FOR INFORMATION ONLY

AGENT OR BROKER:

Name, Address and Telephone)

1. **SCOPE OF BOND.** For good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Principal and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Obligee (and its successors and assigns) to pay for all labor, materials and equipment furnished and/or used in the performance of this Subcontract, which is incorporated in this bond by reference and pursuant to which this bond is issued. The Principal and the Surety agree that this Bond shall inure to the benefit of all persons or entities supplying labor, materials or equipment for the prosecution of the work required under the Subcontract, as well as to the Obligee, and that such persons may maintain independent actions upon this Bond in their own names.
2. **EFFECT OF OBLIGATION.** If Principal shall: (i) make full and timely payment as required by the Subcontract to all persons, entities and/or lienors supplying labor, materials and equipment, directly or indirectly, for all labor, material and equipment furnished and/or used in the performance of the Subcontract, as the same may be amended or modified; and (ii) defend, indemnify and hold the Obligee harmless from, and fully pay for, any and all loss, claims, demands, damages, costs, expense, liens or suits, including through all levels of appeal, claimed by any person or entity seeking payment for labor, materials or equipment furnished and/or used in the performance of the Subcontract and/or which arise or are sustained because of Principal's default under the Subcontract and/or this Bond, then this obligation shall be null and void; otherwise this Bond shall remain in full force and effect.
 - 2.1 **TIME FOR CLAIM.** The Principal and Surety hereby jointly and severally agree with the Obligee that every Claimant, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labor was done or performed, or materials were furnished by such Claimant, for which claim is made, may have a right of action on this bond. The Obligee shall not be liable for the payment of any costs or expenses including attorneys' fees which the Obligee may incur in connection with its defense of any such right of action.
 - 2.2 **RIGHT OF ACTION.** No suit or action shall be commenced on this bond by any Claimant:
 - 2.2.1 Unless Claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: Principal, Obligee, or the Surety above named, within ninety (90) days after such Claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, of for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Obligee or Surety, at any place within the United States where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid Project is located, however, such service need not be made by a public officer.
 - 2.2.2 After the expiration of one (1) year from the date (1) on which the Claimant gave the notice required by Subparagraph 2.2.1, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone on the Project, whichever occurs first. Any limitation embodied in this bond, which is prohibited by any law controlling the Project, shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 - 2.2.3 Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.
3. **CLAIMANT.** A Claimant is defined as an Individual or entity having a direct contract with the Principal to furnish labor, materials or equipment for use in the performance of the Subcontract or any individual or entity having valid lien rights which may be asserted in the jurisdiction where the Project is located. The intent of this bond shall be to include in the terms labor, materials or equipment: that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Subcontract, architectural and engineering services required for performance of the work of the Principal, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
4. **ALTERATION NOTICE WAIVER.** The Surety expressly agrees that no change, extension of time, alteration, amendment, addition, omission, or other modification of the terms of either the Subcontract or the Prime Contract, or both, or in the work to be performed, shall in anyway effect its obligations under this Bond, and Surety does knowingly and voluntarily waive notice of

BOND NUMBER:

EXHIBIT D1

any such changes, extensions of time, alterations, amendments, additions, omissions, and other modifications, including, but not limited to, the Subcontract price and/or time, made by the Oblige. This waiver shall not apply to the time for suit provided by Paragraph 2.2 hereunder.

5. **MISCELLANEOUS.** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with a statutory or other legal requirement in such jurisdiction shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein.

SUBCONTRACT PERFORMANCE BOND

Any singular reference to Principal, Surety, Obligee or other party shall be considered plural where applicable.

PRINCIPAL (SUBCONTRACTOR)
(Name and Address):

**SURETY (Name and Address of Surety
Company Office):**

OBLIGEE (CONTRACTOR)

(Name and Address):

DeAngelis Diamond Construction, LLC
6635 Willow Park Drive
Naples, FL 34109

SUBCONTRACT

Date:

Amount:

Description of Project

(Name and Location):

BOND

Date (Not Earlier than Subcontract Date): _____

Penal Amount: \$ _____

SUBCONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Signature: _____

Name & Title: _____

Witness: _____

SURETY

Company: (Corporate Seal)

Signature: _____

Name & Title: _____

Attach Power of Attorney

Witness: _____

(Any additional signatures appear on page attached)

FOR INFORMATION ONLY

AGENT OR BROKER:

Name, Address and Telephone)

1. **SCOPE OF BOND.** For good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Principal and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Obligee (and its successors and assigns) for the performance of this Subcontract, which is incorporated in this bond by reference and pursuant to which this bond is issued.
2. **EFFECT OF OBLIGATION.** If Principal shall: (i) fully and faithfully perform all of the undertakings, covenants, terms, conditions and agreements of the Subcontract, as the same may be amended or modified, within the time period provided therein and any extensions thereof that may be granted by the Obligee, and during the life of any warranty required under the Subcontract, and (ii) defend, indemnify, and hold Obligee harmless from, and fully pay for, any and all loss, claims, demands, damages, costs, expense, liens or suits, including through all levels of appeal, the Obligee may sustain by reason of Principal's failure to fully and properly perform under the Subcontract and/or this Bond, then this obligation shall be null and void; otherwise this Bond shall remain in full force and effect.
3. **ALTERATION NOTICE WAIVER.** The Surety expressly agrees that no changes, extensions of time, alterations, amendments, additions, omissions, or other modifications of the terms of either the Subcontract or the Prime Contract, or both, or in the work to be performed, shall in any way effect its obligations under this Bond, and Surety does knowingly and voluntarily waive notice of any such changes, extensions of time, alterations, amendments, additions, omissions, and other modifications. This waiver shall not apply to the time for suit provided by paragraph 5 hereunder.
4. **PRINCIPAL DEFAULT.** Within thirty (30) days from receipt of written notice declaring Principal in default of the Subcontract, the Surety shall, and at Surety's sole cost and expense, take one of the following actions:
 - 4.1 **FINANCIAL OR OTHER ASSISTANCE.** Arrange to provide financial and/or other assistance to the Principal to assist the Principal, with the consent of the Obligee, in fully and timely completing the work required under the Subcontract. In such event, that portion of the balance of the subcontract price remaining under the Subcontract shall be paid as directed by the Surety, in writing, and at the times, in the manner, and pursuant to the terms of the Subcontract (as if said sums would have been payable to the Principal had there been no default under the Subcontract);
 - 4.2 **COMPLETE SUBCONTRACT.** Undertake to fully perform and timely complete all work required under the Subcontract itself, through its qualified agents or independent subcontractors retained by Surety who are properly licensed, bonded, and insured, and capable of completing the work, and who are acceptable to the Obligee. In such event, that portion of the balance of the subcontract price remaining under the Subcontract as may be required to complete the Subcontract or remedy the default and to reimburse the Surety for its expenditures shall be paid to the Surety at the times, in the manner, and pursuant to the terms of the Subcontract (as if said sums would have been payable to the Principal had there been no default under the Subcontract);
 - 4.3 **OBTAIN NEW CONTRACTORS.** Obtain bids or negotiated proposals from qualified subcontractors acceptable to the Obligee for full and timely performance and completion of the Subcontract, and arrange for a subcontract (in a form acceptable to Obligee) to be prepared for execution by Obligee and the subcontractor selected, to be secured and guaranteed by performance and payment bonds executed by the replacement subcontractor and a qualified surety in the amount of the subcontract. In such event, Surety shall pay Obligee the difference between the cost of the replacement subcontractor and the amount that would have been payable to the Principal had there been no default under the Subcontract;
 - 4.4 **PAY OBLIGEE.** Pay Obligee the difference between the cost of completing the Subcontract and the amount that would have been payable to the Principal had there been no default under the Subcontract as soon as practicable; or
 - 4.5 **DENY LIABILITY.** Deny its liability in whole or in part and notify and explain to the Obligee the reasons why the Surety believes it does not have responsibility for this liability. Such written denial shall be issued in a reasonable time under the circumstances, but in any event no longer than thirty (30) days after default is declared.
5. **OBLIGATIONS.** Notwithstanding anything herein to the contrary, after written notice of the Principal's default under the Subcontract has been provided to Surety, the Obligee may take any and all actions necessary pursuant to the Subcontract and applicable law to mitigate the damages caused by Principal's default. To the extent that the Obligee performs any obligations of Principal under the Subcontract, the Obligee shall be entitled to deduct any and all costs and expenses thereof, including, but not limited to, legal fees and costs, from the balance of the subcontract price remaining under the Subcontract. To the extent

the balance of the subcontract price remaining under the Subcontract is exhausted, and the Surety elects to proceed under subsection 4.1, 4.2, 4.3 or 4.4 above, the Surety will reimburse the Obligees for the difference between the balance of the subcontract price and the costs and expenses incurred by the Obligees.

If the Surety does not proceed as provided above within the aforementioned thirty (30) day period, the Surety will be deemed to be in default of this Bond, and the Obligees shall be entitled to enforce any and all remedies available to the Obligees.

Subject to the commitment by the Obligees to pay the balance of the subcontract price remaining under the Subcontract pursuant to the terms thereof, the Surety is obligated for:

1. The responsibilities of the Principal to: (i) correct any and all defective work, and (ii) complete all remaining work, required under the Subcontract;
2. Any and all costs or expenses, including, but not limited to, legal, design professional and delay costs, resulting from Principal's default under the Subcontract and/or the actions or failure to act of the Surety as set forth herein; and
3. Liquidated damages, or if no liquidated damages are specified in the Subcontract, actual damages caused by delayed performance or non-performance of the Subcontract.

If the Surety proceeds as provided in subsection 4.5 above, and the Obligees refuse the payment or the Surety has denied liability, in whole or in part, then, without further notice, the Obligees shall be entitled to enforce any and all remedies available to the Obligees.

6. **ALTERATION NOTICE WAIVER.** The Surety expressly agrees that no change, extension of time, alteration, amendment, addition, omission, or other modification of the terms of either the Subcontract or the Prime Contract, or both, or in the work to be performed, shall in anyway effect its obligations under this Bond, and Surety does knowingly and voluntarily waive notice of any such changes, extensions of time, alterations, amendments, additions, omissions, and other modifications, including, but not limited to, the Subcontract price and/or time, made by the Obligees. This waiver shall not apply to the time for suit provided by Paragraph 2.2 hereunder.
7. **MISCELLANEOUS.** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with a statutory or other legal requirement in such jurisdiction shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein.