

DOCKING USE AGREEMENT

THIS DOCKING USE AGREEMENT (the “Agreement”) is made and entered into as of the 4th day of April 2025, by the Town of Bar Harbor, a municipality of the State of Maine (the “Town”), and American Cruise Lines, Inc., a Delaware corporation (“American”).

The following exhibits are attached hereto and incorporated herein by reference:

Exhibit “A” – Depiction of Motorcoach Staging Area.

Exhibit “B” – Depiction of Docking Facilities; and

WHEREAS, the Town desires to make a portion of the certain docking structure located at Ells Pier, Bar Harbor, Maine, 04609, which is commonly referred to as the “Town Pier,” situated on the shoreline of the Mt. Desert Narrows, and which is depicted in Exhibit “B” as the “Docking Facilities”, a Cruise Ship Disembarkation Facility (“CSDF) as outlined in Chapter 52 of Bar Harbor Town Code; and

WHEREAS, for the enjoyment of the Bar Harbor community, the Town desires for the Town Pier and the Docking Facilities to remain available for public use; and

WHEREAS, the Town desires to have a maximum of 260 cruise passengers per day disembark at the Docking Facility; and

WHEREAS, American desires to operate U.S.-registered cruise ships to the Town by tendering guests to the Docking Facilities; and

WHEREAS, the Town, as owner of the CSDF, must comply with the provisions of Chapter 52 of the Bar Harbor Town Code, including the requirement to obtain a Disembarkation Permit authorizing it to receive a specified number of passengers disembarking from cruise ships on a specified calendar day, and to certify the number of passengers disembarking at the CSDF on any such day.

NOW, THEREFORE, in consideration of the agreements, promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and American hereby agree as follows:

1. **THE DOCKING FACILITIES:** The Town shall take all necessary and reasonable steps to cause the Docking Facilities become and remain a CSDF permitted to receive up to 260 cruise ship passengers per day during the term of this Agreement, subject to all applicable laws and regulations, and in no way limiting the Town’s ability to modify such laws and regulations in the future. The parties’ obligations under this Agreement are expressly made conditional upon the Town’s ability to obtain a CSDF permit for the Docking Facilities.

2. **DOCKING:** During the Term of this Agreement, the Town grants American a non-exclusive license on and across, and for the purpose of utilizing, the Docking Facilities together with any and all improvements, benefits, rights of way and easements benefiting the Docking Facilities now existing and hereafter erected thereon or for the benefit thereof and all rights, privileges and appurtenances belonging there in order to tender passengers and crew to the Docking Facilities on the terms and conditions set forth in this Agreement, subject to the direction of and under the coordination of the Harbor Master. Nothing in this Agreement shall be construed to govern the use of the anchorages in Frenchman Bay.

3. **USE:**

(a) American may use the Docking Facilities during scheduled docking visits for the purpose of tendering its passengers from its anchored vessels for disembarkation in and around the Town, or for any other lawful purpose, only as provided in this Agreement.

(b) American's use of the Docking Facilities and operation of its business on the Docking Facilities shall at all times be in accordance with all applicable laws, rules, regulations, statutes, and ordinances, and shall not unreasonably interfere with use of the Docking Facilities by the Town, the public, or other operators. The Town expressly reserves the right to modify or impose additional ordinances or regulations that may impact the use of the Docking Facilities as it deems necessary or appropriate for public safety, environmental protection, overall public interest, or any other lawful purpose.

4. PAYMENT:

(a) In consideration for American's use of the Docking Facilities, American shall pay the Town a docking fee in the amount of \$14.00 per passenger aboard each American vessel tendering to the Docking Facilities (the "Docking Fee"), regardless of whether such passengers actually disembark. Forty-eight hours prior to each scheduled vessel arrival, American shall provide the Harbor Master with a passenger manifest indicating the total number of guests aboard. The Town shall total each manifest together and shall invoice American monthly for all Docking Fees incurred by American.

(b) American shall be subject to a Sixty-Nine Thousand Dollar (\$69,000) annual minimum payment ("Annual Minimum Docking Fee") in the first calendar year of the Agreement (i.e., the year ending December 31, 2025). Beginning in the second calendar year of this agreement (i.e., January 1, 2026) the annual minimum payment shall be Eighty-Five Thousand (\$85,000). At the end of each calendar year, the Town will audit and total Docking Fees paid for that year. If total docking fees paid are less than the Annual Minimum Docking Fee for the calendar year, the Town will invoice American for the difference. American shall pay such invoices within 30 days.

(c) Passenger manifests provided to the Town will not contain personal identifiable information of American's guests, but the Town, upon reasonable advance notice and at a time mutually agreeable to the parties, shall have the right to audit of American's passenger manifest records for up to 3 years for verification purposes, subject to the Town's execution of an appropriate Confidentiality and Non-Disclosure Agreement. Nothing in such Confidentiality and Non-Disclosure Agreement shall relieve the Town of its disclosure obligations under law, including the Maine Freedom of Access Act (1 M.R.S. § 400 et seq.), nor be construed as a waiver of any immunities, defenses, or limitations of liability available to the Town under the Maine Tort Claims Act (14 M.R.S. §§ 8101-8118) or any other provision of law.

(d) Additionally, American shall within 90 days after the date of this Agreement make a one-time, lump sum payment to the Town in the amount of Thirty Thousand Dollars and 00/100 (\$30,000) for the Town's use in enhancing the gangway serving the Town Pier Float.

(e) The parties agree to conduct an annual review of fees and payments under this Agreement, with either party providing advance written notice to initiate the review. This process shall commence no later than the first Monday of October each year to allow for consideration in the Town's budgeting process. Any changes in the payment terms agreed upon by the parties in the annual review process shall be memorialized in a written addendum to this Agreement. If the parties are unable to agree, the payment terms then in force shall continue in force.

5. DOCKING RESERVATION RIGHTS:

(a) In consideration of American's Docking Fee, the Town agrees to grant American certain docking reservation rights ("Docking Rights"). American shall submit to the Town all docking requests for each calendar year on or before January 31st of each year. The Town shall review and accept each docking request prior to accepting any other docking reservations or requests for use of the Docking Facilities for that calendar year, including, but not limited to, requests from other commercial cruise ship operators. The Town may in its sole discretion deny up to five (5) docking requests per year for holidays or town events, but shall not deny any docking request to make way for another vessel docking. If a docking request is denied, the Town shall offer the closest available alternative date.

(b) American agrees to submit its proposed docking schedule to the Town, as directed in writing by the Town. American will have the right to modify the docking schedule due to unforeseen circumstances, including, but not limited to, weather, equipment failure, the Force Majeure events identified in Paragraph 12, or for any other reasons or conditions that may impact American's use of the Docking Facilities. Any such modification shall be subject to availability and the approval of the Town, which approval shall not be unreasonably withheld.

(c) Docking reservations shall be subject to all applicable laws, including local ordinances and regulations. The Town shall have no obligation to confirm reservations for, or allow American the use of the Docking Facilities on, dates for which the Town cannot obtain a Disembarkation Permit under Chapter 52 of Bar Harbor Town Code for 260 passengers or such lower number of passengers as American specifies in the docking request, or otherwise cannot legally allow or facilitate such use. The Town may reject or cancel reservations for any date on which American's use of the Docking Facilities would violate local ordinances or regulations, or any other applicable law.

6. **TERM OF AGREEMENT:** The term of this Agreement (the "Term") shall commence on **April 4, 2025** (the "Commencement Date") and shall remain in effect until **November 30, 2028**. On each anniversary of the Commencement Date, the Term shall automatically be extended one (1) year unless either party provides written notice of non-renewal before the anniversary date. If such notice is provided, the Agreement shall not be further extended, and shall expire at the conclusion of the then-current term. During the Term, including any extensions, American's Docking Rights shall remain in full force and effect.

7. **MAINTENANCE AND OPERATION OF THE DOCKING FACILITIES:** The Town shall maintain the Docking Facilities and surrounding facilities in a commercially reasonable, safe, and workmanlike manner and agrees to make any and all repairs to the Docking Facilities and surrounding facilities that the Town, in its sole discretion, deems necessary to ensure general public safety and functionality. American shall be solely responsible for any specialized or extraordinary repairs required by its particular operations, which repairs may be performed only with the advance written permission of the Town. The Town shall reasonably monitor the public's or other operators' access to and use of the Docking Facilities to the extent feasible, but makes no guarantee against occasional disruptions to American's use of the Docking Facilities. American shall not be responsible for loss or damage caused by the public's or other operators' use of the Docking Facilities.

8. **MOTORCOACH STAGING:** The Town agrees to allow American access to the two areas identified in Exhibit A for the purpose of loading and unloading motorcoaches facilitating onshore passenger excursions for American's guests. In no event shall American have more than two buses in either area, or unreasonably interfere with public access to the Docking Facilities or other public spaces. Staging areas may be modified as mutually agreed. American acknowledges that the staging areas may include paid public parking spaces. For each day that it uses the staging areas, and regardless of the duration of such use, American agrees to reimburse the Town for lost parking revenues due to use of parking spaces for busing services at a rate of \$208 per day.

9. **INSURANCE:**

(a) **Town's Insurance.** The Town shall maintain insurance as follows:

(1) The Town shall procure and maintain throughout the term of this Agreement a policy or policies of insurance, at its sole cost and expense, causing the Docking Facilities to be insured at Actual Cash Value. The Town shall have no obligation to insure the Town Pier itself or any specialized improvements or equipment solely associated with American's operations. The Town shall be the sole loss payee under such policies.

(2) The Town shall procure and maintain through the term of this Agreement, and for a period of at least two years after expiration or termination of this Agreement, at its sole cost and expense, (i) general liability insurance in amounts acceptable to American, not to exceed amounts for which the Town could be held liable under the Maine Tort Claims Act (14 M.R.S. §§ 8101-8118), naming American as an additional

insured, and (ii) workers' compensation insurance and employer's liability insurance in such amounts as required by Maine law.

(b) **American's Insurance.** American shall maintain insurance as follows:

(1) American shall procure and maintain throughout the term of this Agreement, at its sole cost and expense, such insurance policies covering all vessels using the Docking Facilities as are required under Maine, federal, maritime, or other applicable law. Such policies shall, at minimum, cover the full replacement value of all such vessels.

(2) American shall procure and maintain throughout the term of this Agreement, and for a period of at least two years after expiration or termination of this Agreement, at its sole cost and expense, at a minimum:

(a) general liability insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate;

(b) comprehensive automobile liability insurance with limits of at least \$1,000,000.00 per accident including coverage for liability arising out of all owned, leased, hired, and non-owned automobiles;

(c) a commercial umbrella insurance policy with limits of at least \$5,000,000.00; and

(d) workers' compensation insurance and employer's liability insurance in such amounts as required by Maine law, or equivalent coverage for liability for workplace injuries under federal, maritime, or other law; and

(e) American shall have the Town named as an additional insured on each of its liability insurance policies, except that for the purposes of workers' compensation insurance or other equivalent coverage for liability for workplace injuries on which the Town cannot be named as an additional insured, American may instead provide a written waiver of subrogation rights against the Town.

(c) **General Provisions.**

(1) Each party shall, upon request, promptly provide the other party with certificates evidencing the insurance coverage required under this Agreement. Each party must provide written notice to the other party at least 30 days prior to cancellation, non-renewal, material modification, or expiration of any policies required by this Agreement.

(2) Nothing in this agreement shall be construed to require the Town to procure or maintain insurance against claims for which it would be immune, or in amounts exceeding the limits on its liability, under the Maine Tort Claims Act (14 M.R.S. §§ 8101-8118) or any other provision of law. Neither this Agreement nor the procurement or maintenance of any insurance coverage under this Agreement shall be construed as a waiver of the immunities, defenses, or limitations of liability available to the Town under the Maine Tort Claims Act (14 M.R.S. §§ 8101-8118) or any other provision of law.

10. **WAIVER AND SUBROGATION:** The Town and American agree that neither party shall make or authorize any claim against the other party or its agents, employees, or servants in connection with any liability, loss, or casualty covered by insurance maintained under this Agreement, except claims related to insurance proceeds.

11. **INDEMNITY:** American shall defend, indemnify, and hold harmless the Town, its officers, agents, and employees or their heirs, successors, or assigns from and against claims of damage to property or injuries to persons to the extent caused by the negligence of American on the basis of comparative fault, including but not limited to claims of injury or damage to American's vessels, passengers, crew, or invitees.

12. **FORCE MAJEURE:** On written notice to the other party, either party shall be entitled to suspend or terminate this Agreement in the event a Force Majeure occurrence prevents American from utilizing the Docking Facilities as provided in this Agreement. Such Force Majeure events shall include, but are not limited to, acts of God; war; invasion; hostilities; rebellion; strikes; lockouts; fire; flood; hurricanes; epidemics; pandemics; outbreak; earthquake; explosion; decision of any court or other judicial body, including any court order or judgment invalidating this contract, holding that the use contemplated by this Agreement is unlawful, or holding that the Town does not have legal authority to issue the permits, licenses, or reservations anticipated or made necessary by this Agreement; acts of governments; defaults of third parties; or any other causes beyond the party's control. In the event of suspension or termination of this Agreement pursuant to this provision, American shall only be required to pay a prorated amount of its payment obligation calculated up and through the date of written notice of suspension or termination. In the event of suspension, American's payment obligation shall resume upon written notice from the Town that the Docking Facilities become available for American's use as determined by the Town in its sole discretion. The Town shall have no obligation to restore the Docking Facilities for American's use, other than normal repairs as provided in paragraph 7.

13. **TERMINATION:** If at any time during the Term of this Agreement, either party (i) materially breaches any of its obligations under this Agreement and fails to cure such breach within one hundred eighty (180) days of receiving written notice thereof; or (ii) either party is adjudged a bankrupt, makes a general assignment for the benefit of creditors, has a receiver appointed for it, or commits any other act of insolvency, then the Agreement may be terminated by the other and the parties' respective obligations arising under this Agreement shall cease. If this Agreement is terminated as a result of American's breach, the Town may recover from American as its sole measure of damages any unpaid payment obligation that had accrued as of the date of such termination plus any payment the Town would be entitled to receive from American for the remaining calendar year of termination had the Agreement not been terminated based off of the average of the previous three (3) years' payments to the Town.

14. **GENERAL PROVISIONS:**

(a) This Agreement (and the documents referred to herein) constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations and understandings, oral or otherwise, between or among the parties with respect to the matters contained herein, including, but not limited to the Prior Use Agreement.

(b) This Agreement shall not be modified, amended, or supplemented, in whole or part, without the prior written consent of the parties hereto. Each and every waiver of any covenant, representation, warranty, or any other provision hereof must be in writing and signed by each party whose interests are adversely affected by such waiver. No waiver granted in any one instance shall be construed as a continuing waiver applicable in any other instance.

(c) The parties intend and agree as follows: (i) that if any provision of this Agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded; (ii) that if an unenforceable provision is modified or disregarded in accordance with this section, then the rest of this Agreement will remain in effect as written; and (iii) that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

(d) This Agreement shall be governed by the laws of the State of Maine, without regard to choice of law principles. It is expressly agreed between the parties that in the unlikely event of a dispute of any nature relating to this contract arising between them, the parties shall endeavor in good faith to resolve their claims by mediation prior to initiating litigation, with each party bearing half of the mediator's fee. The parties expressly agree that the venue for mediation shall be Bar Harbor, Maine, unless otherwise agreed to by the parties in writing. The parties further agree that the sole venue for any action to enforce this Agreement shall be the state courts of Hancock County, Maine, and hereby submit to the personal and subject matter jurisdiction of said courts.

(e) If any legal action or other proceeding is brought for the enforcement hereof, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions hereof, the substantially prevailing

party shall be entitled to recover reasonable attorneys' fees, court costs and expenses even if not taxable as court costs (including, without limitation, fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party may be entitled.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE TOWN OF BAR HARBOR,
a municipality of the State of MAINE


By: James L. Smith
Its: Town Manager

AMERICAN CRUISE LINES, INC.,
a Delaware corporation


By: Charlie B. Robertson
Its: President & CEO

Exhibit A

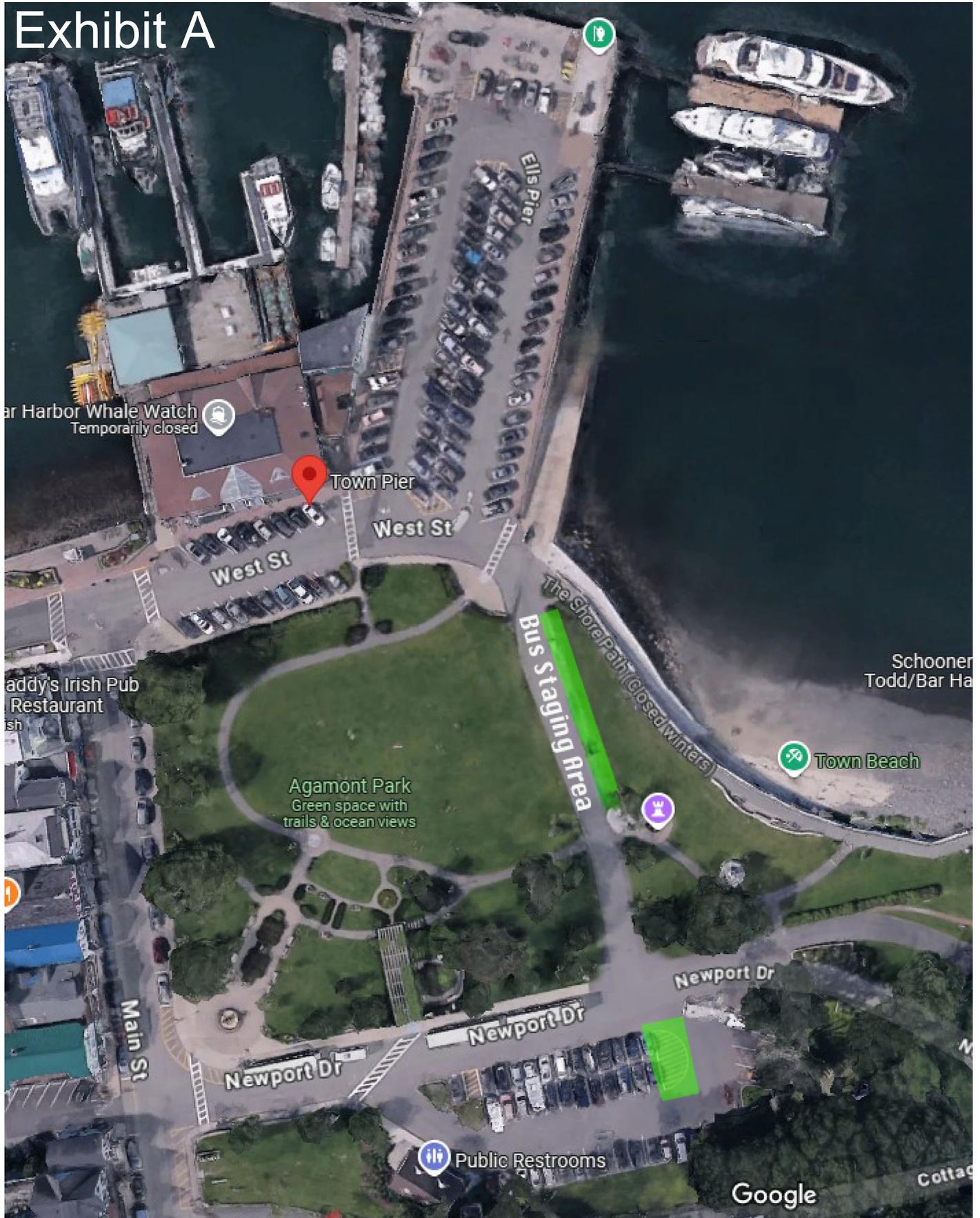




Exhibit B

Docking Facilities

Fish House Grill

Harbor Place

Waterfront
Parking

Ells Pier

Agemont Ln

Maddy's Irish Pub
Restaurant

Mount Desert - Seal
Harbor Library