

DATED

28<sup>th</sup> November

2005

BROADLAND DISTRICT COUNCIL

- and -

THE THORPE AND FELTHORPE TRUST

- and -

MR SIMON MELTON

- and -

MR PAUL FELLOWS

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## AGREEMENT

Made pursuant to Section 106 of the  
Town and Country Planning Act (as amended)  
1990 and any other enabling power relating to the  
development of land adjacent to East Coast  
Quads Ltd Plumstead Road East  
Thorpe St Andrew Norfolk

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Head of Law  
Norfolk County Council  
County Hall  
Martineau Lane  
Norwich  
NR1 2DH



THIS AGREEMENT is made the 28<sup>th</sup> day of November Two thousand and five

B E T W E E N BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich in the County of Norfolk (hereinafter called "The Council") of the first part and THE THORPE AND FELTHORPE TRUST of the Estate Office Walsingham Norfolk (hereinafter called "The Owner") acting by Samuel Justin Francis Meath Baker of Hasfield Court Gloucester and James Barnabus Burke Mayhew of Twysden Kilndown Cranbrook Kent of the second part and MR SIMON MELTON of Dolphin Cottage Crostwick Norwich and MR PAUL FELLOWS of 138 Plumstead Road Norwich (hereinafter called "The Tenants") of the third part

#### RECITALS

(A) (1) In this Agreement unless the context otherwise requires the following words shall have the following meanings:-

"Application" the application for full planning permission for change of use of the land to an outdoor pursuits centre for paintball games and archery submitted to the Council in accordance with the Application plans and other materials deposited with the Council and bearing reference number 2003 0185

"Development" the development permitted by the Permission

"Forest Plan" the Thorpe Estate Norfolk Forest Plan 2001-2020  
Ref No 017014



"Permission"	the planning permission granted pursuant to the Application together with any renewal or modification thereof
"the Plan"	the plan or plans annexed to this Agreement
"1990 Act"	means the Town and Country Planning Act 1990 (as amended)

(2) In this Agreement unless the context otherwise requires:

- (i) words importing the masculine gender shall where appropriate include the feminine gender and the neuter gender or vice versa as the case may be and words importing the singular number shall where appropriate include the plural number and vice versa
- (ii) "party" or "parties" means a party or parties to this Agreement
- (iii) references to any party shall include the successors in title and assigns of that party
- (iv) where a party includes more than one person any obligations of that party shall be joint and several
- (v) headings in the Agreement shall not form part of or affect its construction
- (vi) references to clauses and schedules are references to clauses in and schedules to this Agreement
- (vii) where a party or any officer or employee is required to give its consent approval or agreement in any specific provision in this Agreement such approval or agreement shall not be unreasonably withheld or delayed
- (viii) any mention herein of any Act or of any Section Regulation or Statutory Instrument shall be deemed to refer to the same source



as at any time amended and where such Act, Section , Regulation or Statutory Instrument has been replaced, consolidated or re-enacted with or without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting Act or Section or Regulation or Statutory Instrument

- (B) The Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Land is situated
- (C) The Owner is the legal owner in fee simple in possession of part of Racecourse Plantation Thorpe St Andrew Norwich (hereinafter called "the Land") shown for the purpose of identification only edged red on the Plan annexed hereto
- (D) The Tenants have <sup>certain rights under</sup> ~~the benefit of~~ <sup>part of</sup> a Lease over <sup>^</sup> the Land and have made the Application JMK FRB.7
- (E) Having regard to the Development Plan and other material considerations the Council considers it expedient in the interests of the proper planning of their area that provision should be made for regulating or facilitating the Development of the Land in the manner hereinafter appearing and the Council is satisfied the Permission can only be granted subject to and upon completion of this Agreement

NOW THIS DEED WITNESSETH as follows:-

- 1.1 This Agreement and the covenants that appear hereinafter are made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 and any other enabling power
- 1.2 The covenants that appear hereinafter are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council



- 1.3 This Agreement is a Deed and may be modified or discharged in part or in total at any time after the date of this Agreement by agreement between the parties in the form of a Deed
- 1.4 This Agreement is a local land charge and upon completion shall be registered by the Council as such
- 1.5 No waiver (whether express or implied) by the Council or any breach or default by the Owner or the Tenants performing or observing any of the covenants in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof
- 1.6 Any provision of this Agreement which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Agreement
- 1.7 This Agreement shall be governed by the laws of England
- 1.8 No party shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement after that party has parted with its interest in the Land or the part of the Land in respect of which such breach occurs PROVIDED THAT liability will still remain for any breach occurring prior to the parting of any party's interests in the Land or any part thereof in respect of which any such breach has taken place
- 1.9 This Agreement shall cease to have effect if either the permission is quashed revoked or otherwise withdrawn
- 1.10 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of the Agreement shall be deemed to have been validly served or given if received by facsimile,





*M. Mower* 5614

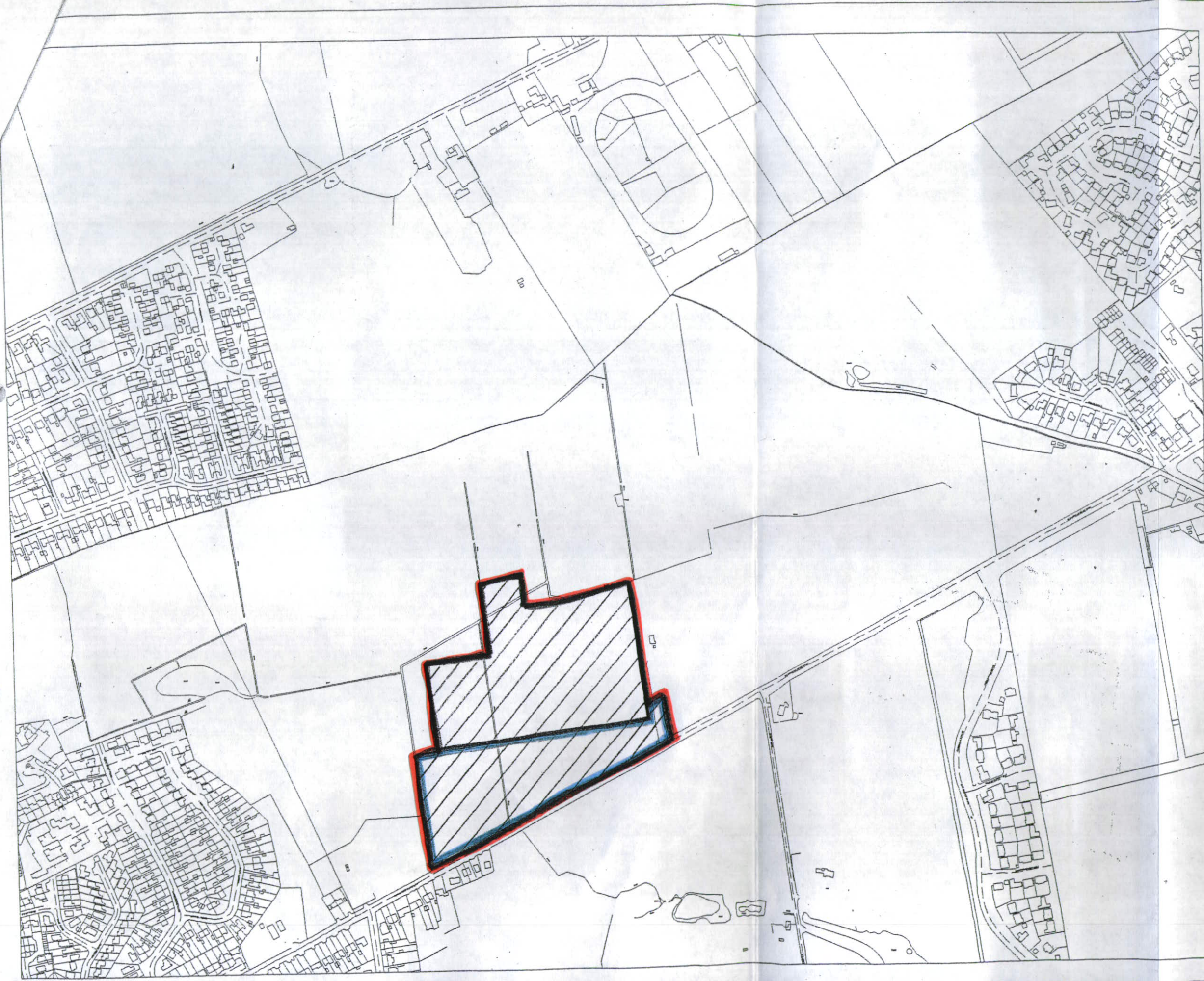
COMMITTEE MANAGER & DEPUTY  
MONITORING OFFICER

— = Outdoor Sports Area

/// = land subject to  
S.106 Agreement



Drawn By	
Date	+ Date +
Scale	+ Scale + 1:5000
Reference	+ Reference +
Location	+ Location +
OS Reference	+ OS Reference +





delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing provided that the notice or other written communication is addressed and delivered or sent by facsimile or by recorded delivery post to the address of the party concerned as nominated in clause 1.11

1.11 The address for any notice or other written communication in the case of each party to this Agreement shall be as follows:-

The Council	The Strategic Director (Community Services) Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich
The Owner	The Estate Office Walsingham Norfolk NR22 6BP
The Tenants	Mr S Melton Dolphin Cottage Crostwick Norwich Mr P Fellows 138 Plumstead Road Norwich

1.12 Any notice or other written communication to be given by the Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council by a duly authorised officer

## 2. FINANCE

2.1 The Owner and the Tenants further agree that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Land under the terms of this Agreement are hereby waived

2.2 All works and activities to be carried out under the terms of this Agreement (including for the avoidance of doubt such works as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and/or the Tenants and at no cost to the Council



2.3 All consideration given and payments made in accordance with the provisions of this Agreement shall be exclusive of any VAT properly payable in respect thereof and in the event of VAT becoming chargeable at any time in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not presently been charged in respect of that supply the person making the supply shall raise a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

### 3. ARBITRATION

3.1 Any dispute or difference arising between the parties as a result of this Agreement shall be referred to the arbitration or a single arbitrator to be agreed upon between the parties, or failing agreement within fourteen (14) days after any of the parties has given to the other parties a written request requiring the appointment of an Arbitrator, to a person to be appointed at the request of any of the parties by the President of the Institution of Civil Engineers for the time being

3.2 Any reference to arbitration shall be undertaken in accordance with and subject to the provisions of the Arbitration Act 1996 save as follows:-

3.2.1 the seat of the arbitration shall be at the Council's offices in Norwich

3.2.2 where appropriate the Arbitrator may consolidate arbitral proceedings

3.2.3 with the parties agreement the Arbitrator may appoint experts or legal advisers

3.3 Any of the parties mentioned in clause 3.1 concerned in any such dispute or difference arising from this Agreement wishing to refer any such dispute or difference to arbitration shall notify the other parties in writing of such intention without delay



3.4 The Arbitrator shall act as a referee and not as an expert except in any case where the parties to a dispute or difference agree on the Arbitrator when such parties may also agree that such Arbitrator shall act as an expert

3.5 Subject to Sections 67, 68 and 69 of the Arbitration Act 1996, the parties agree to be bound by the decision of the Arbitrator

#### 4. RIGHTS OF THIRD PARTIES

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in that person's own right to enforce any provisions of this Agreement pursuant to the provisions of the said Act

#### 5. COVENANTS

##### THE OWNER

5.1 The Owner hereby covenants and undertakes with the Council so as to bind the Land and each and every part thereof to carry out and comply with the obligations set out in Clause 6 of this Agreement

##### THE TENANT

5.2 The Tenants hereby covenant and undertake with the Council so as to bind the Land and each and every part thereof to carry out and comply with the obligations set out in Clause 6 of this Agreement

#### 6. FOREST PLAN OBLIGATION

6.1 Unless and until the use permitted by the Permission is permanently discontinued over the Land and the Council agrees in writing that the use is permanently discontinued (the Council's agreement not to be unreasonably withheld or delayed)



- (i) not to implement any of the provisions of the Forest Plan as apply to the Land; and
- (ii) to replant within the next available planting season any tree that dies or is felled cut down or uprooted or in any other manner destroyed or removed within the area edged blue on the Plan attached hereto with whips or feathered trees of the same species unless otherwise agreed in writing by the Council

PROVIDED THAT if the use of the Land (or any part of it) for the purposes of the Permission resumes after such discontinuance then the provisions and obligations of this Agreement shall be deemed to be reinstated until such time as the said use is permanently discontinued over the Land and the Council agrees in writing that the use is permanently discontinued (the Council's agreement not to be unreasonably withheld or delayed)

IN WITNESS whereof this Agreement has been executed and delivered as a Deed on the date first written above

THE COMMON SEAL of )  
BROADLAND DISTRICT COUNCIL )  
was hereunto affixed in the presence of )



*M. Mowle*

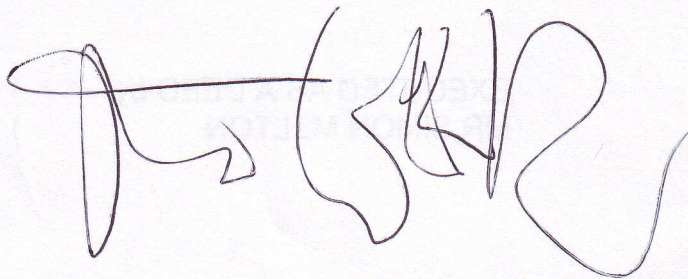
COMMITTEE MANAGER & DEPUTY  
MONITORING OFFICER

5614

~~Head of Corporate Services and Monitoring Officer~~



EXECUTED AS A DEED by )  
THE THORPE AND FELTHORPE TRUST )  
in the presence of )  
Samuel Justin Francis Meath Baker )

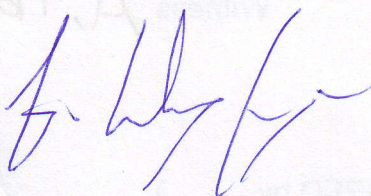


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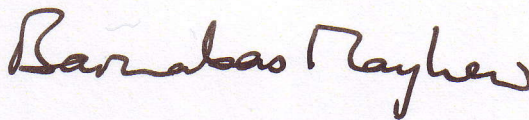
M. MALLALITZ  
11 WESLEY SQ  
LONDON  
W11 1TP

Witness

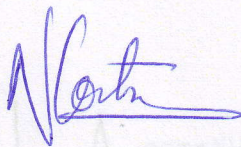


A. LINDSAY-FYNN  
6 VEREKER RD  
LONDON  
W14 9SR

EXECUTED AS A DEED by )  
THE THORPE AND FELTHORPE TRUST )  
in the presence of )  
James Barnabus Burke Mayhew )



Witness



N Costaras  
85 Appach Road  
London SW2 2LE

Witness

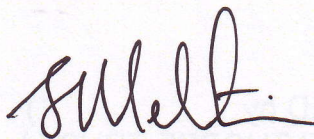


N.C.G. COSTARAS  
85 APPACH ROAD  
LONDON SW2 2LE



EXECUTED AS A DEED by  
MR SIMON MELTON

)  
)



Witness J. P. Skinner

Witness A. Harrell

EXECUTED AS A DEED by  
MR PAUL FELLOWS

)  
)



Witness J. P. Skinner

Witness A. Harrell