DELAWARE COUNTY IOWA
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BOOK 2005 PAGE 335
DEBORAH L. FRYTON
DELAWARE CO. RECORDER
42.00

Unit 5.00
CSB

Return To: Shannon P. Thompson, Bradley & Riley PC, PO Box 2804, Cedar Rapids, IA 52406-2804

WASTE DISPOSAL LEASE AGREEMENT

THIS IS AN AGREEMENT entered into this 7th day of October, 2004, by and between Mouw Family Investments, L.L.C. (hereinafter "Operator"), which operates or will operate a swine facility located at 2064 245th Ave., Earlville, IA 52041 and Ralph D. Nieman and Reva C. Nieman (hereinafter "Owner") with an address of 2357 State Highway 38, Delhi, IA 52223.

In consideration of the mutual covenants and promises herein contained, the parties agree as follows:

1. **Grant of Lease**. Owner does hereby grant unto Operator, its successors and assigns, a lease upon that land set forth below for the purpose of depositing all animal waste products, excluding animals and animal parts, from livestock operations conducted on the above-described premises owned and operated by Operator, together with the right of entrance and exits at convenient points for the period necessary to deposit and disseminate said animal waste products on, over, across, and through the premises now owned by Owner, which are described as follows:

197 acres more or less of Owner's land are available for application of waste. See plat map of Owner's land attached hereto as Attachment A

All cropland in the area described as follows:

A PORTION OF THE SE ¼ SW ¼ OF SECTION 3, TOWNSHIP 89 NORTH, RANGE 4, WEST OF THE FIFTH P.M., DELAWARE COUNTY, IOWA, consisting of approximately 41 acres, designated as the north Field #2 on the Oneida Plat attached hereto as Attachment A; and

A PORTION OF THE SE ¼ OF SECTION 28, TOWNSHIP 89 NORTH, RANGE 4, WEST OF THE FIFTH P.M., DELAWARE COUNTY, IOWA, consisting of approximately 156 acres, designated as the south Field #2 on the Oneida Plat attached hereto as Attachment A; and

2. **Term and Termination**. This agreement shall be for a term of 20 years, beginning on October 1, 2005. The agreement shall continue after the end of this period, under the same terms and conditions, for additional one-year periods unless terminated in writing by either party at least thirty days prior to the scheduled

termination. The agreement shall terminate prior to the scheduled termination date if Operator ceases to produce livestock at the location specified for a continuous period of 3 years.

3. **Time of Application**. Unless otherwise consented to by Owner, said right to enter the above-described real estate of Owner and to deposit said waste products is limited in time to the time following harvesting of the crop grown thereon by Owner, its successors and assigns, up to and not later than June 1, of the next crop year, or other days as agreed upon by Owner and Operator. Operator shall notify Owner at least 30 days prior to the deposit of manure. If Owner determines that soil conditions exist which would result in manure application being detrimental to crop production, owner shall notify Operator of conditions detrimental to crop production at least 14 days prior to the designated time of deposit, except in instances where precipitation requires delay or termination of application.

4. **Application**. Owner shall, at Owner's expense, provide all equipment and labor to apply manure to the land. Owner shall provide Operator with timely access to the land for the deposit of manure prior to Owner's application thereof. Operator shall not pile, stack, or otherwise store manure on the land.

5. **Level of Soil Nutrients**. Said Lease shall further be limited by a maximum amount of waste products to be deposited upon said real estate. The maximum amount shall be mutually agreed upon by the parties hereto and shall be based upon the analysis of the soil and an analysis of the waste products, taking into account the intended farming use of the real estate by Owner, its successors and assigns. Operator shall have the right, but not the obligation, to deposit animal waste products to Owner's property above described at a rate not to exceed the nutrient uptake requirement of the crop. Owner guarantees Operator the right to deposit a minimum of 125 pounds of nitrogen per acre along with potassium and potash each year to the property described in Section 1 of this Agreement.

If the parties are unable to mutually agree upon the maximum amount of waste products to be deposited, then the parties agree to submit samples of soil and waste to Iowa State University, Ames, Iowa and to abide by their recommendations as to the maximum amount of waste that can be deposited upon said real estate taking into account Owner's intended farming use of said real estate. Should Iowa State University not be able to render said advice, then the samples shall be submitted to another credible laboratory of the party's choice. The cost of said analysis shall be borne equally by the parties hereto.

6. **Benefit and Assignability**. It is agreed that the Lease herein conveyed and granted shall inure to the benefit of Operator, its successors and assigns and shall pass automatically with a conveyance or transfer of possession of Operator. **Owner represents that it has the full right and power to enter into the Lease granted herein**. This agreement shall not be assigned by Owner without the express prior written consent of Operator.

7. **No Minimum Application**. The fact that this Agreement has been granted to Operator in no way obligates the Operator or commits Operator to deposit any waste

whatsoever upon the described land. Subject to the limitations on the maximum amount of waste, Operator, its successors and assigns shall have full right to determine the amounts of waste to be deposited on said property.

8. **Binding Effect**. This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives and shall be deemed as a **covenant running with the land**.

9. **Compensation**. Owner, its successors and assigns, agree to pay Operator, its successors and assigns, reasonable compensation for the cost of the deposit of the animal waste products herein before described.

Future reasonable compensation will be determined by the parties each year depending on the circumstances in the local agricultural economy at the time and if the parties are unable to mutually agree upon the reasonable compensation for any certain year, then the parties agree to submit the question to the Iowa State University, Ames, Iowa and to abide by its recommendations of the fair compensation. Further in the event Iowa State University is not able to render said advice, then each party selects an expert and the two (2) experts shall select a third expert. Then the three (3) experts shall make a recommendation concerning the reasonable compensation for the year and the parties agree to abide by said recommendation. Finally, if the three experts cannot agree, then the reasonable compensation for the year shall be the average of the three expert opinions.

10. **Regulations and Permits**. Operator shall be responsible for obtaining and complying with government permits required for the confinement feeding operation and application of manure from the operation. Owner shall be responsible for application of manure in compliance with applicable law or regulations. Owner shall cooperate with Operator as necessary to obtain required permits.

11. **Warranty and Disclaimer**. There is no warranty, representation, or guarantee regarding the manure, express or implied, oral or written, including any warranty or guarantee of merchantability or fitness for a particular purpose of the manure or the quality or quantity of the manure or whether the manure will be beneficial or detrimental to the land, crops or other items on the land.

12. **Limitation of Liability and Indemnification**. Each party shall defend, indemnify and hold the other party harmless from any loss, liability, damage, or expense, including reasonable attorneys' fees, arising in connection with or resulting from any claims made by third parties arising out of any purported negligence or misconduct of the other as it relates to the deposit, application or misapplication of the waste on Owner's land.

Further, Operator agrees to hold harmless Owner from any claims, civil or criminal, arising from any claim by local, state or federal governments of violations of any laws, rules or regulations caused by Operator or his employees caused by the hauling or spreading of manure on the leased premises.

13. **Entire Agreement**. This agreement shall not be assigned by Owner without the express prior written consent of Operator. This agreement constitutes the entire agreement between the parties and it supersedes all negotiations and other discussions prior to and after the execution of this agreement.

14. **Amendments**. No amendment of the terms of this agreement will be effective unless made in writing and signed by the parties. The waiver of a provision of this agreement will not be deemed a waiver of future compliance with this agreement.

15. **Severability**. In the event any provision of this agreement is held unenforceable, in whole or in part, the remaining provisions of this agreement will not be affected thereby unless the unenforceable provision materially alters the rights of either party and it is impossible to adjust for the unenforceable provision.

16. **Arbitration.** If a dispute arises out of, or relates to, this Agreement or the subject matter of this Agreement that is not resolved by the parties in the course of its business relationship, either party may submit the dispute to a sole mediator selected by the parties or, at any time prior to selection of a sole mediator, to mediation by the American Arbitration Association ("AAA"). If not thus resolved, it shall be referred to a sole arbitrator selected by the parties or to AAA arbitration, for final and binding arbitration. The arbitration shall be governed by the United States Arbitration Act and judgment on the award may be entered by any court having jurisdiction. The arbitrator shall not limit, expand or modify the terms of the Agreement nor award damages in excess of compensatory damages, and each party waives any claim to such excess damages. A request by a party to a court for interim protection shall not affect either party's obligation hereunder to mediate and arbitrate. Each party shall bear its own expenses and an equal share of all cost and fees of the mediation and/or arbitration. Any arbitrator selected shall be competent in the legal and technical aspects of the subject matter of this Agreement. The content and result of mediation and/or arbitration shall be held in confidence by all participants, each of whom will be bound by an appropriate confidentiality agreement. Nothing herein shall be deemed to prohibit either party from seeking injunctive relief in any court or tribunal of competent jurisdiction to prevent or stop the breach by the other party hereunder.

OWNER HAS BEEN ENCOURAGED TO CONSULT AN ATTORNEY PRIOR TO THE EXECUTION OF THE LEASE HEREIN AND ACKNOWLEDGES THAT HE HAS BEEN GIVEN SUFFICIENT TIME AND OPPORTUNITY TO CONSULT COUNSEL.

IN WITNESS WHEREOF, the parties hereto have executed the Waste Disposal Lease Agreement the year and date above written.

OPERATOR:

Mouw Family Investments, L.L.C.
By: Loren J. Mouw, Manager

OWNER:

Ralph D. Nieman

Reya C. Nieman

STATE OF IOWA)
) ss
COUNTY OF Linn)

On this 25 day of October, 2004, before me, a Notary Public, in and for said State, personally appeared Loren J. Mouw, to me personally known, who being by me duly sworn did say that that person is Manager of said Limited Liability Company, that no seal has been procured by the said Limited Liability Company by authority of its Managers and the said Loren J. Mouw acknowledged the execution of said instrument to be the voluntary act and deed of said Limited Liability Company by it voluntarily executed.



Notary Public, State of Iowa

STATE OF IOWA)
) ss
COUNTY OF Delaware)

The foregoing was acknowledged before me this 30th day of December, 2004, by Ralph D. Nieman to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.



Notary Public, State of Iowa

STATE OF IOWA)
) ss
COUNTY OF Delaware)

The foregoing was acknowledged before me this 30th day of December, 2004, by Reva C. Nieman, to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.



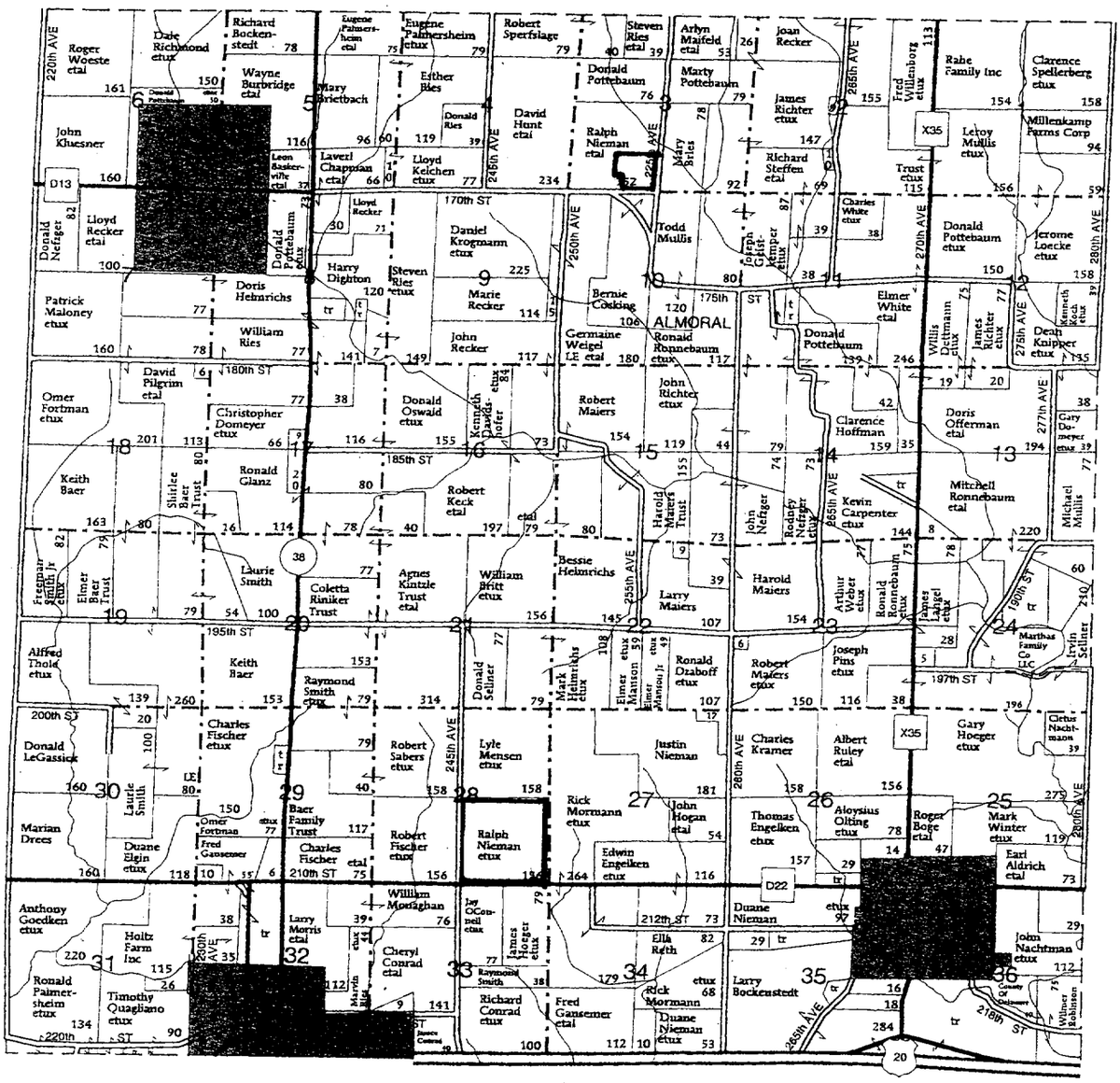
Notary Public, State of Iowa

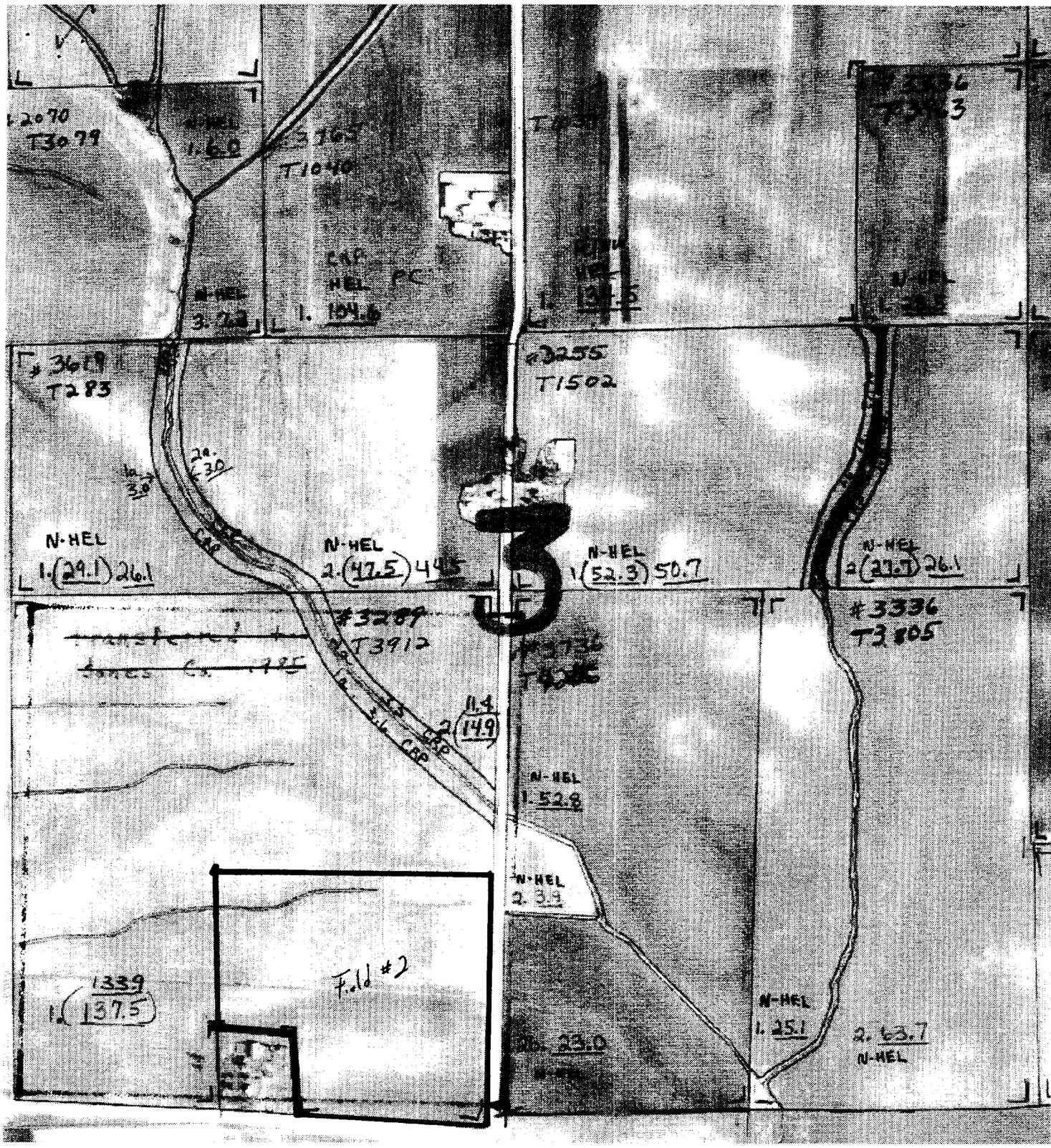
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ONEIDA PLAT

(Landowners)

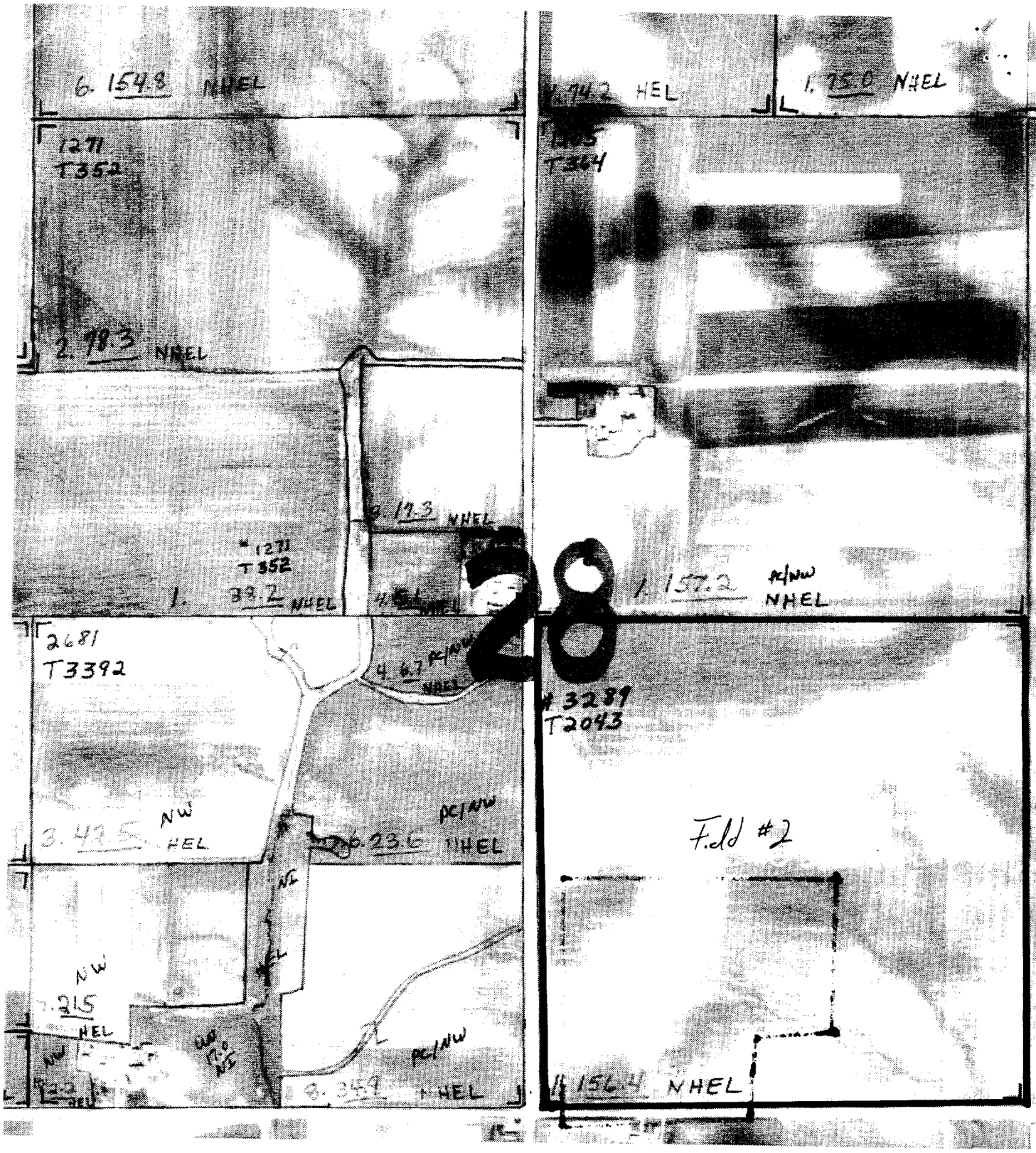
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NOT TO SCALE (1990 FLIGHT) DELAWARE COUNTY -CROP YEAR _____ K-4

Attachment "A"



NOT TO SCALE (1990 FLIGHT) DELAWARE COUNTY -CROP YEAR _____