

MEMORANDUM OF AGREEMENT

Between



**THE STATE GOVERNMENT OF SABAH
(SABAH FORESTRY DEPARTMENT)**

and



**KOPERASI PELANCONGAN MUKIM BATU PUTEH,
KINABATANGAN (KOPEL) BHD**

On

**THE MANAGEMENT
OF PIN SUPU FOREST RESERVE, KINABATANGAN**

THIS MEMORANDUM OF AGREEMENT (hereinafter referred to as “Agreement”) is made on this 8th November 2016.

BETWEEN

THE STATE GOVERNMENT OF SABAH, as represented by the Director of Forestry Department Sabah and having its address at Mile 6, Labuk Road, 90009 Sandakan, Sabah (hereinafter referred to as “State Government”) of the one part;

AND

KOPERASI PELANCONGAN MUKIM BATU PUTEH, KINABATANGAN (KOPEL BHD.) (Registration no. S-4-685) a co-operative established under the Co-operative Societies Act 1993 and having its office at Jalan Feri Lama, Kg Mengaris, Mukim Batu Puteh, Kinabatangan, Sabah, (hereinafter referred to as “KOPEL BHD.”) of the other part.

(The State Government and KOPEL BHD as the context may require, shall hereinafter collectively be referred to as “the Parties” and “Party” refers to anyone of them.)

WHEREAS;

- a) The Parties are desirous to enter into an agreement on the sustainable forest management of the Pin Supu Forest Reserve, Kinabatangan with an area of 4,620.44 hectares as particularly described in Appendix A hereto (hereinafter referred to as “PSFR”).
- b) This Agreement is to have a long term partnership between the Parties for the sustainable forest management of the Pin Supu Forest Reserve, Kinabatangan.

NOW IT IS HEREBY AGREED as follows:-

1. DEFINITION AND INTERPRETATION

1.1. In this Agreement, unless the context otherwise requires, the following words shall have the following meanings:

words

meanings

“Activities”

means the activities are as follows:-

- (a) To monitor and patrolling activities for the prevention of encroachment, poaching and forest fire within the forest reserve;
- (b) To conduct forest resource conservation activities through monitoring forest ecosystems and biodiversity, and forest restoration in degraded sites within the forest reserve;
- (c) To carry out forest restoration activities;
- (d) To conduct wildlife monitoring activities;
- (e) To conduct tourism activities within the forest reserve; and
- (f) Any other activities that prescribed in the Pin Supu Forest Management Plan and Annual Work Plan;

All the activities as mentioned above must in compliance with principles and criteria of Forest Stewardship Council (FSC) Certification Standards.

“Authorised Officer”

means any officer duly authorized by the Director of Forestry to exercise all or any of the powers and duties of the Director of Forestry under this Agreement;

“AWP”	means concept where an integrated and coordinated series of actions to be taken directed towards the achievement of specified objectives as specified in the Annual Work Plan, managed by the Sabah Forestry Department;
“Clause”	means a clause of this Agreement;
“Commencement Date”	means the date of this Agreement;
“Director”	means the Director of the Forestry Department appointed under Section 3 of the Forest Enactment 1968 and includes a Forestry Officer duly authorized by the Director to act on his behalf;
“Forest Enactment 1968”	means the Forest Enactment 1968 and all rules made thereunder;
“FMP”	means the concept where an integrated and coordinated series of actions to be taken directed towards the achievement of specified objectives as specified in the Forest Management Plan, managed by the Sabah Forestry Department;
“Forestry Officer”	means any person appointed under Section 3 of the Forest Enactment 1968;
“PSFR”	means the Pin Supu Forest Reserve, Kinabatangan with a total area of 4,620.44 hectares;

“State Government” means the Government of the State of Sabah represented by the Director of Sabah Forestry Department

“facilities” means the facilities owned by the State Government, which consists of:

- (a) A reception centre which is known as Pin Supu Auxiliary Reception Centre and currently known as KOPEL Reception Centre located at Kinabatangan River Bridge, Lower Kinabatangan under the 8th Malaysian Plan (hereinafter referred to as the “PSARC”). PSARC is currently equipped with reception Centre, kitchen, toilets and office, jetty and floating platform.
- (b) An eco-camp which is known as Pin Supu Eco-Camp at Block B of PSFR under the 10th Malaysian Plan (hereinafter referred to as the “PSEC”). PSEC is currently equipped with camping building, kitchen, toilet, stairs from river and platform.

“Minister” means the Minister for the time being responsible for matters relating to natural resources;

“to occupy” means to hold possession and to utilize and control;

“to restore” means to restore or rehabilitate by planting or any acceptable silvicultural treatment; and

“tree”	Includes any tree, shrub or bush or any kind of seedling, sapling or reshoot of any age, root, stump, stem, branch, palm, cane, climber or any part of any of those.
“tourism activities”	means the activities includes among others boat cruises and wildlife observation along the Kinabatangan River, camping activities, canoeing, kayaking, adventure caving, rock climbing, abseiling, bird watching, home stay programmes, jungle walk and wildlife observation in the Pin Supu Forest Reserve, Kinabatangan.
“OP”	lawful occupation of Forest Reserve for a public purpose or residential purpose or occupation under temporary licence.
“TOL”	lawful occupation of State land or land reserved for a public purpose or residential purpose or occupation under temporary licence.

2. DURATION OF AGREEMENT

This Agreement shall commence from 8th November 2016 until 7th November 2026 unless earlier terminated in accordance with the provisions herein.

3. OBJECTIVES

The Parties agree that the main objective is to set and formalise a clear agreement between the Parties on the management of the Pin Supu Forest Reserve (PSFR), Kinabatangan. The objectives are as follows:-

- 3.1. To support and manage the PSFR in accordance to the Forest Stewardship Council Principles and Criteria;
- 3.2. To protect the Pin Supu Forest Reserve from encroachment, poaching and forest fire;
- 3.3. To support forest resource conservation activities through monitoring forest ecosystems and biodiversity, and forest restoration in degraded sites within the reserve;
- 3.4. To support the sustainably managed tourism activities within the forest reserve;
- 3.5. To support and enhance the community forestry initiatives that incorporate local community involvement in the employment and service contract, management and community-based ecotourism in the reserve.
- 3.6. To enhance and showcase the community forestry initiatives and raise general public awareness about Sustainable Forest Management and biodiversity conservation;
- 3.7. To enhance the capacity of and between the Parties;

4. GENERAL TERMS

- 4.1. This Agreement shall form the basis of mutual cooperation between the parties thereof.
- 4.2. The Parties hereto agree that they will carry out the common intentions expressed in this Agreement in such manner and form as shall be mutually beneficial to both Parties.
- 4.3. Each Party acknowledges and undertakes that they will endeavour to render unto the other full assistance and cooperation for the successful implementation of this Agreement.

5. OBLIGATION OF PARTIES

5.1. THE STATE GOVERNMENT

- (a) The State Government shall allow KOPEL BHD to participate in the management of the PRFR by enhancing the community involvement through KOPEL BHD.
- (b) The State Government shall allow KOPEL BHD to enter the PSFR for the management and carry out the activities and tourism activities as prescribed in the FMP and AWP.
- (c) The State Government shall allow KOPEL BHD to use, manage, operate and maintain the facilities therein for tourism activities run by KOPEL BHD without any rental charges.
- (d) The State Government shall allow KOPEL BHD manages tourism activities along the Kinabatangan River and in the PSFR at Kinabatangan.
- (e) The State Government will continue giving support to KOPEL BHD to operate their tourism activities within the forest reserve as part of the tourism activities at Kinabatangan River, subject to the renewable of the OP-01/04 referred hereto.

5.2. KOPEL BHD

- (a) KOPEL BHD shall assist the State Government on the management of the PSFR.
- (b) KOPEL BHD shall involve in the forest fire fighting, monitoring, protection, and forest restoration activities in the PSFR.
- (c) KOPEL BHD shall support and work with the State Government to raise awareness amongst visitors and the general public regarding the conservation efforts in the PSFR.

- (d) KOPEL BHD shall comply with the Forest Stewardship Council principles and criteria for all activities in the forest reserve.
- (e) KOPEL BHD shall be responsible for the wildlife monitoring, water quality monitoring and community forestry programme in the PSFR as prescribed in the FMP.
- (f) KOPEL BHD manages tourism activities in the PSFR, Kinabatangan.
- (g) KOPEL BHD shall submit each monitoring reports as per in Clause 5.2 (a) - (e) to the State Government as prescribed in the FMP.
- (h) KOPEL BHD shall be responsible to finance, manage and maintain the facilities in good condition.
- (i) KOPEL BHD shall provide personnel for the management and upkeep of the facilities.
- (j) KOPEL BHD should seek written approval from the State Government and relevant authorities if any new structures are to be built on the facilities itself or any renovation or extension therein.
- (k) KOPEL BHD shall assist the State Government to collect entrance fee and other service charges imposed by the Sabah Forest Department in the PSFR at a rate prescribed by the Sabah Forest Department.
- (l) KOPEL BHD shall be responsible to ensure that TOL and/or any other licence or permit required under the law is obtained for the operation and use for the tourism activities.
- (m) KOPEL BHD shall be responsible to pay all charges in respect of electricity, water and telephone services used in the facilities to the relevant authorities.

6. ESTABLISHMENT OF A MANAGEMENT COMMITTEE

- 6.1. In furtherance of the objectives above, there shall be established a Management Committee which shall be a consultative body consisting of an equal number of members nominated by the State Government and KOPEL BHD. The Chairman of the Management Committee shall be selected from time to time by the members of the Management Committee from among its members.
- 6.2. The functions of the Management Committee shall be:-
- (a) to monitor the activities above;
 - (b) to make recommendations in respect of the same;
 - (c) to ensure the activities above are conducted in accordance with the laws of the State of Sabah, the terms of this Agreement and the conditions of the PSFR; and
 - (d) to monitor the progress of the FMP and AWP.
- 6.3. The Management Committee shall meet not less than twice a year.

7. FACILITIES

- 7.1. Any new structures to be built on the facilities and its surrounding areas must obtain the approval in writing from the State Government and relevant authorities. Any new structures built shall be owned by the State Government.
- 7.2. These structures shall be surrendered to the State Government upon the termination of the operation of KOPEL BHD or upon the expiry or termination of the Agreement whichever is earlier, without any compensation whatsoever to KOPEL BHD.

8. RELATIONSHIP BETWEEN THE PARTIES

- 8.1. This Agreement is not intended to be a legally binding commitment but sets out the intentions and understanding between the Parties.
- 8.2. Nothing contained in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, company, corporation or other business organisation between the Parties hereto, and none of the Parties hereto shall have the authority to bind the other in any way.

9. TERMINATION

- 9.1. If either Party commits a breach of the terms hereof, that Party may serve upon the other Party, a notice in writing requiring the breach to be remedied within thirty (30) days. If the party receiving such notice fails to remedy the breach within the time specified or if the breach cannot be remedied, the party who served the notice may serve another notice, in writing, terminating this Agreement without prejudice to any rights which may have accrued to either Party. This second notice shall become effective upon receipt.
- 9.2. Either Party may terminate this Agreement by giving three (3) months prior written notice to the other. The Parties agree to consult with each other as to the effect of the termination on the Project and to assist each other in ensuring that the termination or transition of the Project proceeds smoothly.

10. CONFIDENTIALITY

- 10.1. Each Party shall undertake to observe the confidentiality of documents, information and other data received or supplied to the other Party during the period of the implementation of this Agreement or any other agreement made in pursuance to this Agreement.

- 10.2. The Parties agree that the provisions of this clause shall continue to be binding between the Parties notwithstanding the expiry or termination of this Agreement.
- 10.3. Neither Party shall make any commitment or take any position on behalf of the other without that Party's specific, written consent. In addition, each Party shall maintain the right to express its opinion individually, on topics related to participation on this Agreement, and each organisation will strive to notify the other before taking any public position.

11. RESULTS AND PUBLICATIONS

- 11.1. Research results, materials and images developed under this Agreement shall be considered as the joint property of the State Government and KOPEL BHD and the disclosure, dissemination, publication, reproduction, transmission and usage of the same or any part thereof in any form or manner whatsoever shall be subject to the mutual consent of both Parties and in every such case, full acknowledgement shall be accorded to both.

12. NOTICES

- 12.1. Any Notice, approval, consent, request or other communication required or permitted to be given or made under this Memorandum shall be in writing in Bahasa Malaysia or English Language and delivered to the address or facsimile number of the State Government or KOPEL BHD., as the case may be, shown below or to such other address, or facsimile number as either Party may have notified the sender and shall unless otherwise herein be deemed to be duly given or made, in case of delivery in person or by facsimile transmission, when delivered to the recipient at such address of facsimile number which is duly acknowledged:

To the STATE GOVERNMENT:

Director of Forestry Department

Sabah Forestry Department

Locked Bag 68

90009 SANDAKAN

SABAH, MALAYSIA

Telephone No. : (089) 242500

Facsimile No. : (089) 671303 / (089) 672579

**To KOPERASI PELANCONGAN MUKIM BATU PUTEH,
KINABATANGAN (KOPEL) BHD.:**

Chairman,

PPM 538 ELOPURA,

90000 Sandakan

MESCOT Base, Jalan Feri Lama, Kg. Mengaris,

90200 SABAH MALAYSIA

Telephone No.: (089) 551 070

Facsimilie No.: (089) 551 064

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1. The Parties shall abide by the rules and regulations on intellectual property policies and rights of their respective institutions. The term for sharing and commercialising property rights of results reached from joint activities within this Agreement shall be specified in each separate agreement.
- 13.2. The Parties agree that any intellectual property arising from this Agreement shall be jointly owned by the State Government and KOPEL BHD, in a fair way.

14. GOVERNING LAW and DISPUTE RESOLUTION

- 14.1. Any dispute arising from the implementation or interpretation of this Agreement shall be resolved amicably by consultation, negotiation and/or mediation between the Parties in accordance hereto.
- 14.2. If at any time any question, dispute or difference of opinion shall arise between the State Government and KOPEL BHD upon or in relation to or in connection with this Agreement or any part thereof, either Party will forthwith give to the other a notice in writing of such questions, dispute or difference of opinion and the same shall be referred to a person mutually agreed by both Parties for mediation and reconciliation.
- 14.3. In the event that no agreement is reached between the Parties upon reference to the mediation on the question, dispute or difference of opinion, the matter shall be referred to an arbitrator to be agreed between the Parties and failing such agreement, to be nominated on the application of either Party by the Director General of the Regional Center for Arbitration in Kuala Lumpur and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2005 (Act 646) which provisions and any statutory modifications thereof for the time being in force shall apply. The decision of the arbitrator shall be final and binding on each of the Parties.
- 14.4. The venue for the mediation/arbitration as the case maybe shall be at Kota Kinabalu, Sabah.

15. GOVERNMENT APPROVALS

- 15.1. If and so far as the consent or approval of any official body or government department is required for purposes of this collaboration and/or this Agreement, each Party shall forthwith inform the other Parties of such requirement and apply for and use its best endeavours to obtain such consent or approval.

15.2. In the event such consent or approval of any official body or government department of the party hereto cannot be obtained through no fault of the respective Party, the Party who fails to obtain such consent or approval shall inform the other Party of this matter within 14 (fourteen) working days of such notice of non-approval and provide a report stating the implication thereof and such recommendations as may be necessary.

16. TIME IS OF THE ESSENCE

16.1. Time wherever mentioned is of the essence of this Agreement.

17. NON-ASSIGNABILITY

17.1. It is agreed that none of the Parties hereto shall be entitled to assign or in any manner encumber or transfer its interest or any part thereof in this Agreement without the prior written approval of the other Party.

18. SUSPENSION

18.1. Each Party reserves the right for reasons of national security, national interest, public order or public health to suspend temporarily, either in whole or in part, the implementation of this Agreement which suspension shall take effect immediately after notification has been given to the other Party.

19. AMENDMENT

19.1. No modification, amendment or waiver of any of the provisions of this Agreement shall be effective unless made by the mutual consent and made in writing specifically referring to this Agreement and duly signed by the Parties.

20. WAIVER

20.1. Failure by either Party to enforce at any time any provision of this Agreement shall not be construed as a waiver of its right to enforce the breach of such provisions or

any other provision of this Agreement or as a waiver of any continuing, succeeding or subsequent breach of any provision or other provision of this Agreement.

21. COST AND EXPENSES

21.1. Each Party shall bear its own legal costs and expenses in the preparation and execution of this Agreement. Stamp Duty for this Agreement, if any, shall be borne by KOPEL BHD.

22. MISCELLANEOUS

22.1. Neither Party hereto shall be entitled to make or permit or authorise the making of any press release or other public statement of disclosure concerning this Agreement or any of the transactions contemplated hereunder without the written consent of the other Party.

23. FORCE MAJEURE

23.1. Neither the State Government nor KOPEL BHD. shall be in breach of its obligations under this Agreement if it is unable to perform its obligations under the Agreement (or any part of them), other than the payment obligations as a result of the occurrence of an Event of Force Majeure.

23.2. An "Event of Force Majeure" shall mean –

- (a) War (whether declared or not), hostilities, invasion act of foreign enemies;
- (b) Insurrection, revolution, rebellion, military or usurped power, civil war or act of terrorism;
- (c) Natural catastrophes including but not limited to earthquakes, floods and subterranean spontaneous combustion or any operation of the forces of nature against which the affected party could not reasonably have been expected to take precautions;
- (d) Nuclear explosion, radioactive or chemical contamination or radiation;

- (e) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and
 - (f) Riot, commotion or disorder, unless solely restricted to employees of the State Government or KOPEL BHD. or its personnel, servants or agents.
- 23.3. If an Event of Force Majeure occurs by reason of which either Party is unable to perform any of its obligations under this Agreement (or any part thereof), the Party shall inform the other Party immediately of the occurrence of the Event of Force Majeure with full particulars thereof and the consequences thereof.
- 23.4. If either Party considers the Event of Force Majeure to be of such severity or to be continuing for such period of time that it effectively frustrates the original intention of this Agreement then the Parties may agree that this Agreement may be terminated upon mutual agreement of the Parties.
- 23.5. If this Agreement is terminated by an Event of Force Majeure pursuant to the above clause, all rights and obligations of the Parties under this Agreement shall forthwith terminate and neither Party shall have any claim against the other Party and neither Party shall be liable to each other save for any rights and liabilities accruing prior to the occurrence of the Event of Force Majeure.
- 23.6. Neither Party shall be entitled to rely upon the provisions above if both Parties reasonable determine that an Event of Force Majeure has not occurred.
- 23.7. For avoidance of doubt, the Parties shall continue to perform those parts of those obligations not affected, delayed or interrupted by an Event of Force Majeure and such obligations shall, pending the outcome of this clause continues in full force and effect.

24. INDEMNITY TO THE STATE GOVERNMENT

- 24.1. KOPEL BHD shall at all times indemnify ,and keep the State Government indemnified from and against any claim for any damages, expense, liability, loss

or proceedings whatsoever which maybe brought by any third party connected with anything done by KOPEL BHD in connection with its rights, obligations and responsibilities under this Agreement.

IN WITNESS WHEREOF THE PARTIES HERETO SIGNED THIS MEMORANDUM OF AGREEMENT ON THE DAY AND YEAR AS FIRST ABOVE WRITTEN:

SIGNATORIES

In the presence of



DATUK SAM MANNAN

for and on behalf of the

STATE GOVERNMENT OF SABAH

duly authorised under Section 3 of the
Government Contracts Act 1949



FREDERICK KUGAN

Deputy Director of Forestry



MOHD HASIM B ABD HAMID

Chairman

KOPEL BHD



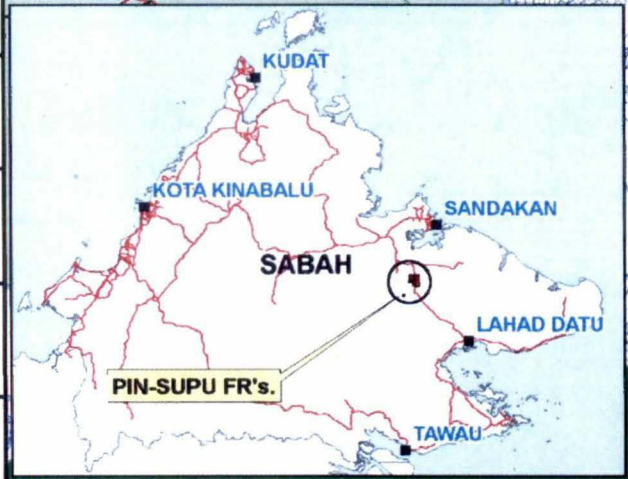
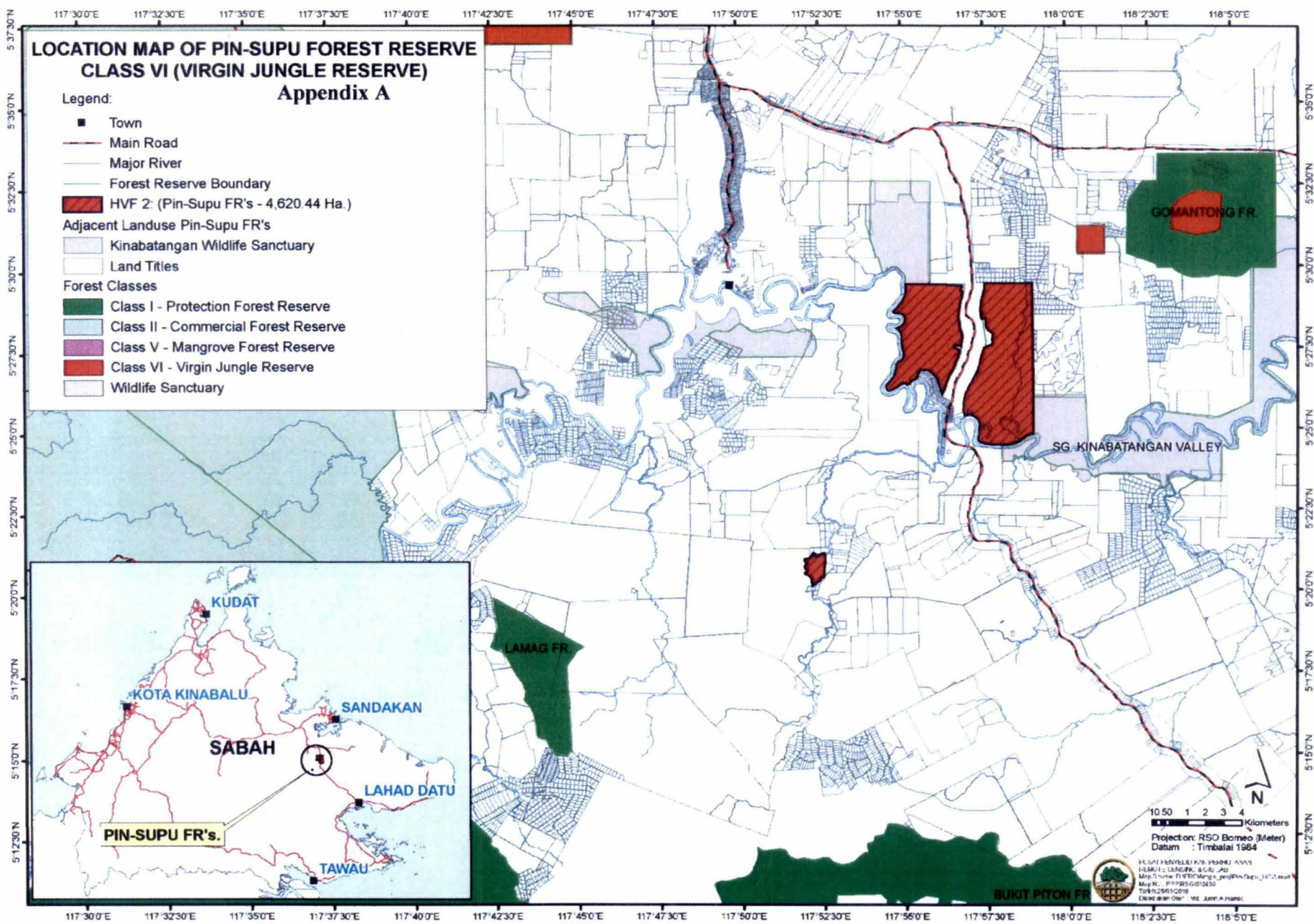
SANIH BIN NASRI

Deputy Chairman

KOPEL BHD

LOCATION MAP OF PIN-SUPU FOREST RESERVE CLASS VI (VIRGIN JUNGLE RESERVE) Appendix A

- Legend:**
- Town
 - Main Road
 - Major River
 - Forest Reserve Boundary
 - ▨ HVF 2: (Pin-Supu FR's - 4,620.44 Ha.)
 - Adjacent Landuse Pin-Supu FR's
 - ▨ Kinabatangan Wildlife Sanctuary
 - ▨ Land Titles
 - Forest Classes
 - ▨ Class I - Protection Forest Reserve
 - ▨ Class II - Commercial Forest Reserve
 - ▨ Class V - Mangrove Forest Reserve
 - ▨ Class VI - Virgin Jungle Reserve
 - ▨ Wildlife Sanctuary



Projection: RSO Borneo (Meter)
Datum: Timbalai 1984

IKLON PINDAAN RUSUMAH ASAS
JALAN LINDANG, 46100
Majlis Perbandaran Pinang, Pinang, 11000
Map No.: P/1985/GS/0330
Tahun 2561/2018
Disediakan Oleh: MS. JAMES A. HARRIS

