



# ***SUBARU* 360**

**Dealer Sales Agreement**

SUBARU DEALER SALES AGREEMENT

THIS AGREEMENT, made and entered into this 29<sup>th</sup> day of July, 1968, by and between SUBARU OF PENNSYLVANIA, INC., a PENNSYLVANIA Corporation, hereinafter called "Distributor" and Cumberland Motors of 1665 N. Delsea Drive Vineland, New Jersey a/an Individual, Corporation, Partnership hereinafter called "Dealer".

WITNESSETH:

That the parties hereto, for and in consideration of the mutual covenants and agreements contained herein, do hereby covenant and agree as follows:

I.

DEFINITIONS

That the following definitions shall apply to this within Agreement:

- A. "MANUFACTURER" shall mean FUJI HEAVY INDUSTRIES LTD., of Tokyo, Japan.
- B. "IMPORTER" shall mean SUBARU OF AMERICA, INC., of Bala Cynwyd, Pennsylvania.
- C. "PRODUCTS" shall mean new passenger vehicles, parts and accessories and equipment bearing the trademark "FUJI" or "SUBARU" supplied or approved by the Manufacturer for such new passenger vehicles manufactured by the Manufacturer.
- D. "CURRENT PARTS" shall mean new, unused and undamaged service parts and accessories in Dealer's stock purchased by Dealer from Distributor in first class saleable condition, sold by Distributor for use in the passenger vehicle the SUBARU 360 Sedan Deluxe, Model K111DL.

E. "DATE OF DISPATCH" shall mean the time in which the Manufacturer shall deliver any of the products sold hereunder to carrier for delivery to Dealer, his agent, or designee, in accordance with Dealer instructions.

F. "SERVICE POLICIES AND PROCEDURES MANUAL" shall mean the Subaru Service Policies and Procedures Manual furnished by Distributor to authorized Subaru Dealers, as changed or modified from time to time by Importer or Manufacturer by the issuance of a new Subaru Service Policies and Procedures Manual or in accordance with change notices or letters or service bulletins issued from time to time by the Importer or Manufacturer to authorized Subaru Dealers.

#### DEALER'S SELLING PRIVILEGE

Dealer is granted the non-exclusive privilege of selling new Subaru motor vehicles, parts and accessories, and, subject to the provisions hereof, Dealer is granted the non-exclusive privilege of displaying in connection with the sale or offering for sale and servicing of Subaru motor vehicles, parts and accessories, the various trademarks and service marks, including "Fuji", and the several other word and design marks which are used on or in connection with or applied to Subaru motor vehicles, parts and accessories by Manufacturer.

## II,

#### DURATION OF AGREEMENT

That this Agreement shall be deemed effective on the day of acceptance by Distributor, and shall continue for one year from the date of acceptance, and thereafter from year to year, unless terminated in accordance with the provisions hereof.

III.

DEALER'S STOCKS

That Dealer shall at all times maintain a stock of new vehicles of the latest model of not less than ~~twelve (12)~~ <sup>six (6)</sup> new vehicles. (Dealer must, at all times while this within Agreement is in force and effect, maintain a stock of new vehicles equivalent to Dealer's estimated sales for the next thirty (30) days or the equivalent in paid orders for same respective period.)

A. Dealer shall purchase and maintain stocks of genuine service parts, accessories and special tools manufactured by the Manufacturer and offered for sale by the Distributor, of an assortment and in a quantity as Distributor shall determine to be adequate to meet the current demand and need therefor, and the Dealer will not sell as a genuine Subaru service part or accessory any part or accessory not, in fact, manufactured or approved by Manufacturer.

B. Dealer shall not sell, or offer for sale, or use in the repair of any product of the Manufacturer, as a genuine, new Subaru service part or accessory, any service part or accessory that is not, in fact, a genuine, new Subaru service part or accessory manufactured or approved by the Manufacturer.

C. Manufacturer may change the design or specifications of any Subaru motor vehicles, parts or accessory at any time without notice and without obligation to make the same or any similar change upon any Subaru motor vehicles, parts or accessories previously purchased by or shipped to Dealer or being manufactured or sold in accordance with Dealer's orders.

IV.

PRICES AND DISCOUNTS

That the Distributor shall invoice, and the Dealer shall purchase from the Distributor, the new vehicles or service parts or accessories to the Dealer at the wholesale list prices as established by the Distributor, and current on the date of dispatch. The Distributor may change at any time, and from time to time, without notice to the Dealer, the price of any such new vehicle or service part or accessory. Distributor may issue new or change or modify existing terms of sales bulletins, price schedules, or price lists. In the event of notice of any such change in prices, the Dealer shall have the right to cancel any order or orders for new vehicles, and/or service parts or accessories of standard specification affected by such change, and which shall not have been dispatched at the date of such notification; provided however, that the Distributor shall be notified of Dealer's cancellation by telegram or letter within five (5) days after receipt by Dealer of notification of such change of prices; provided, further, that orders for new vehicles of non-standard specifications may not be cancelled under any circumstances by the Dealer.

V.

PAYMENTS

Payment for each of the products purchased by Dealer shall be made at time of order by cash, by certified check, by cashier's check, or such other median of payment as Distributor may agree to accept, on or prior to shipment.

A. That, inasmuch, as it will be necessary for Distributor to order cars, parts and accessories through the Importer and for

the Importer to order the same through the Manufacturer, Distributor may refuse to honor any orders for passenger vehicles, parts or accessories from Dealer unless and until Dealer shall have prepaid for orders in above manner.

B. To integrate the shipment of assembled motor vehicles from plant sites with continuing plant production, to minimize required shipping facilities and storage areas, and to facilitate and expedite loading and transportation of vehicles by carriers, Importer will select the distribution point (Point of Entry) and shall be responsible to carriers for all charges and costs in effecting delivery of motor vehicles to Point of Entry.

C. Notwithstanding, with respect to the passage of title, each shipment shall be at the risk of Dealer, and Dealer shall be responsible for filing all claims for loss of or damage to any of the products while in the possession of any carrier.

D. Dealer shall be responsible for and shall pay any and all storage and other charges accruing after arrival of any shipment at its destination and for no reason can refuse or delay acceptance at Port of Entry. Dealer has responsibility to remove vehicle or vehicles from Point of Entry by carrier or other means at his own expense.

E. Distributor shall not be liable to Dealer for any loss or damage to new vehicles, service parts or other accessories, subsequent to the date of dispatch, at which time Distributor's responsibility shall cease. All claims for shortages must be submitted to the Distributor by the Dealer within five (5) days after receipt of any of the products on which shortages are claimed, and claims submitted after the expiration of five (5) days shall not be considered or allowed.

VI.

DELAYS IN DELIVERIES

The Distributor agrees to give careful consideration to each order received from Dealer for products, but Distributor shall not be liable in any respect for failure to ship or for delay in the shipment of any products, whatever the reason or cause therefor, nor shall Distributor be liable to Dealer for any loss of profits resulting directly or indirectly from such delay in shipment or failure to ship.

VII.

POLICY WITH RESPECT TO DEALER OPERATION

The Dealer shall:

A. Maintain a place of business, sales room and service facilities in a manner satisfactory to Distributor, and shall employ adequate trained personnel in all departments, including, without limitations, competent salesmen sufficient to solicit, to the satisfaction of the Distributor, all potential purchasers of the products in Dealer's locality, and shall maintain such place of business in the operation, at not less than the business hours customary to the trade.

B. Once Dealer is established in facilities and at a location or locations mutually satisfactory to Dealer and Distributor, Dealer will not move to or establish a new or different location, branch sales office, branch service station, or place of business including any used car and/or truck lot or location without the prior written approval of Distributor.

Concurrently with the execution of this Agreement, Distributor and Dealer have executed a "Statement of Dealership Premises" describing the location or locations of and the facilities at the

place or places of business to be established and maintained by the Dealer and the purposes for which each shall be used by Dealer in the performance by Dealer of its obligations under this Agreement. In the event of any approved change in such location or locations or places of business during the term of this Agreement, a new "Statement of Dealership Premises" shall be executed by Dealer and Distributor reflecting such approved change.

C. Render service with respect to the products, including without limitation, all services to which a purchaser of the products would be entitled from any authorized Subaru Dealer, regardless of the Dealer from whom any of the products have been purchased. In this regard, the Dealer shall conform to all rules and regulations not inconsistent with the terms and conditions of this Agreement, from time to time issued by the Distributor, Importer or by the Manufacturer and furnished to the Dealer in relation to service to owners of new vehicles or vehicles which have been manufactured by the Manufacturer and the Dealer shall sell such new vehicles and service such vehicles, whether current models or not, in such manner as to maintain and increase the good reputation of the products, Distributor, Importer and of the Manufacturer. Dealer will provide service customers with an itemized invoice covering the details of the services performed.

D. Except for the express written warranty in respect of Subaru parts and accessories published in the Subaru Service Policies and Procedures Manual, all express or implied warranties, representations and obligations of Manufacturer, whether statutory or otherwise, as to the quality, merchantability or fitness for any particular purpose of any Subaru parts and accessories are hereby expressly excluded.



Except for its express liability under such warranty, Manufacturer assumes no obligation or liabilities, and it authorizes no other person to assume for it any other obligations or liabilities in connection with Subaru parts and accessories.

E. Dealer shall organize and maintain a complete service organization, including a sufficient number of competent, trained service personnel, adequate to take care of the service requirements of owners of Subaru motor vehicles.

To assist Dealer in the fulfillment of Dealer's responsibilities for service under this Agreement, Distributor may offer general and specialized service courses from time to time to which Dealer, based on the needs of Dealer's service personnel, shall send members of Dealer's service organization at Dealer's expense.

To assist Dealer's service organization in providing necessary service to owners of Subaru motor vehicles, Distributor will provide Dealer with general technical data, service manuals and bulletins for use by members of Dealer's service organization.

F. Dealer shall provide adequate service equipment and such special tools as may be necessary to enable Dealer to fulfill Dealer's responsibilities for service under this Agreement.

G. Dealer shall submit orders for Subaru motor vehicles to Distributor for acceptance at mutually satisfactory periods. Such orders shall be submitted upon order forms supplied by Distributor.

Manufacturer is authorized to install any applicable Federal, State or local rule, law or regulation on any motor vehicle ordered by Dealer whether or not such item of optional equipment or accessories is included in Dealer's order for such motor vehicle.

Accepted orders for any standard motor vehicles not shipped during the month for which delivery was scheduled will remain in effect unless cancelled in whole or in part by Importer upon written notice to the Dealer and Distributor.

H. Arrange for the Distributor to receive each month firm orders for new vehicles to be shipped during the month and estimated requirements for the second and third succeeding months, and to furnish to Distributor each month on the date or dates designated by Distributor an order or orders for Dealer's requirements of genuine Subaru service parts and accessories.

I. To assist Distributor in the evaluation of current market trends and to provide information for use in the adjustment of established future production schedules, as well as current production and distribution schedules to the extent possible, Dealer will:

(1) Fill in and transmit to Distributor the retail delivery card, by the end of the day on which such motor vehicle is sold to the retail customer,

(2) Furnish Distributor every ten (10) days, or at such other intervals as Distributor may determine, with a sales report. Such sales reports shall show retail sales of new motor vehicles made during such period, new motor vehicle stock, and unfilled orders for new motor vehicles on hand at the end of each period.

J. Permit the Distributor, or its agents, at all reasonable times to inspect Dealer's place of business, sales room and service facilities, and to inspect the records and accounts of Dealer, relating to the sale, warranties and servicing of the products.

K. It is to the mutual interests of Distributor and Dealer that uniform accounting systems and practices be maintained by

Dealers in order that Distributor may develop standards of operating performance which will enable Dealers to obtain the most satisfactory results from the sales potentials assigned to them, and which will enable Distributor to prepare composite Dealer profit statements periodically to guide Distributor in formulating policies beneficial to the Dealer's interests.

Accordingly Dealer will use and keep up-to-date a satisfactory uniform accounting system of a type designated by Distributor and will furnish to Distributor, by the tenth (10th) of each month, a complete and accurate financial and operating statement, the supporting data, covering the preceding month's operations and showing the true and actual condition of Dealer's business. Dealer will maintain said system in accordance with the Accounting Manual prescribed by Distributor.

L. In furtherance of the purposes, objectives and obligations provided in this Agreement, Dealer will keep complete and up-to-date records regarding the sale of and servicing of Subaru motor vehicles.

Moreover, in order that Distributor policies and procedures relating to applications for reimbursement for warranty and policy work, to parts wholesale compensation claims and to applications for discounts, allowances, refunds or credits under other Subaru programs may be uniformly applied to all Subaru Dealers, Dealer will prepare, keep up-to-date and retain, in accordance with the policies and procedures formulated by Distributor, records in support of applications for reimbursement for warranty and policies work performed by Dealer, claims for parts wholesale compensation and

by this within Agreement.

A. Dealer hereby certifies that all motor vehicles, parts, accessories and items similar thereto purchased from Distributor are for resale in the course of Dealer's business. Dealer further certifies that Dealer has obtained any license required to collect sales or use taxes incurred in any such resale transactions, and that the number, if any, of such license has been or will be furnished to the Distributor. Dealer agrees, as to any such motor vehicles, parts, accessories or items similar thereto which are withdrawn from stock and put to a taxable use in lieu of or prior to resale, and as to any tangible property which Dealer purchases for use and not for resale, to pay directly to the appropriate taxing authority any sales, use or similar taxes incurred by such use or purchase, to file any tax returns required in connection therewith, and to hold Distributor or Importer harmless from any claim or demands made by such taxing authority with respect thereto.

## IX.

### CONDITIONS OF SALE

All products are sold by the Distributor to the Dealer on the terms and conditions set forth in the Manufacturer's warranties and conditions of sale current at the date of dispatch. The Distributor undertakes no obligations to the Dealer, except to use its best efforts to secure performance by the Manufacturer of the obligations set forth in the Manufacturer's warranties or conditions of sale, if any are promulgated. The provision is made in lieu of all other warranties, express or implied and is accepted by the Dealer in lieu of any other rights as to the quality or fitness of the products.

A. In effecting the sale of products to customers, the Dealer shall, in every case prior to the sale, notify the purchaser of the Manufacturer's warranties and/or conditions of sale, current at the time of sale, and shall incorporate such warranties and conditions of sale as conditions of every sale which the Dealer shall make. Dealer will inform retail purchasers of Dealer's delivered prices and give them itemized invoices covering the details of such purchases. In the event of a failure by the Dealer to incorporate said conditions of sale and/or warranties in any sale, the Dealer shall alone be responsible to any such customer for any and all damages recovered and shall indemnify and hold harmless the Distributor and Importer against any and all claims, demands, causes of action and expenses, including attorney's fees, and howsoever incurred, arising out of a sale where Dealer has failed to observe the terms and conditions of this subparagraph.

B. For such warranty adjustments and for special policy and campaign adjustments approved by Distributor, Distributor will reimburse Dealer as follows:

Parts: For any defective part or parts Distributor will pay or credit Dealer an amount equal to the then current Dealer price of such part or parts plus twenty-five percent (25%).

Dealer will comply with Distributor disposition instructions on defective parts acquired by Dealer as a result of performing warranty, special policy or campaign adjustments. If disposition instructions require that such defective parts be returned to Distributor, they shall be packed or crated and shipped transporta-

tion charges prepaid in accordance with such instructions. Distributor will reimburse Dealer for transportation charges prepaid by Dealer on authorized shipments.

C. The Distributor shall have the right upon notice to the Dealer from time to time to substitute other conditions and/or warranties for all or any of the existing conditions of sale and/or warranties or to modify any such existing conditions; no such substitute or modified conditions and/or warranties shall affect sales made to a customer prior to receipt of such notice by the Dealer.

X.

#### ADVERTISING

The Dealer shall provide and maintain such signs (product and service) and displays as are necessary to advertise his business on a basis satisfactory to the Distributor. At all times the specifications and design of such signs and displays shall be approved by the Distributor.

A. The Manufacturer is the exclusive owner of the various trademarks, including the word "Subaru" and the several words and design marks, which Manufacturer uses in connection with motor vehicles, parts and accessories and the servicing thereof.

Dealer is granted the non-exclusive privilege of displaying such trademarks and service marks in connection with the sale or offering for sale and servicing of Subaru motor vehicles, parts and accessories; provided, however, that the Dealer shall discontinue the display or use of any such mark or change the manner in which any mark is displayed or used when requested to do so by the Distributor, Importer or Manufacturer. Such marks may be used as part

of the name under which Dealer's business is conducted only with the express approval of Importer and Manufacturer.

If any such mark is used as part of Dealer's business or corporate name or is used in signs, advertising or in any other manner by Dealer, Dealer will, upon termination of this Agreement, immediately discontinue, at its expense, the use of any trademarks.

B. The Dealer may use other methods of advertising but such advertising shall be in a satisfactory and proper manner in the opinion of the Distributor; the Dealer shall be solely responsible for the cost of and claims for damages of any kind arising from any such advertisement and agrees to indemnify and hold harmless the Distributor, Importer and Manufacturer against any and all claims, demands, causes of action, and expenses, including attorney's fees, which may arise by reason of such advertising.

C. In connection with the advertising and promotion of the products, the Dealer shall, at all times, keep and maintain in good running order, and in clean condition, new vehicles, as registered demonstration vehicles, exclusively for the purpose of giving demonstrations to prospective customers.

## XI.

### TERMINATION OF AGREEMENT

A. This Agreement may be terminated by either party upon notice effective immediately.

(1) The Dealer may terminate by notice effective immediately in any of the following events:

(a) Upon death of the Dealer, if the Dealer is an individual;

(b) Upon the death of any partner of Dealer, if Dealer is a partnership;

(c) Upon dissolution of Dealer, if Dealer is a corporation or co-partnership;

(d) Upon insolvency or bankruptcy of Dealer;

(e) Upon appointment by a court of competent jurisdiction of a receiver, trustee, or custodian for Dealer or Dealer's business;

(f) Upon an assignment by Dealer for benefit of creditors.

(2) The Distributor may terminate by notice effective immediately in any of the following events:

(a) Any assignment or attempted assignment by Dealer of any interest in this Agreement without the express written consent of Distributor, including the sale, transfer or relinquishment voluntarily or involuntarily, by operation of law or otherwise of any substantial interest in the direct or the indirect ownership or management of the Dealer.

(b) Failure of Dealer for any reason to function in the ordinary



course of business or to keep his place of business open during the hours customary to the trade;

(c) Any dispute, disagreement, or controversy between or among partners, managers, officers or stockholders of the Dealer, which is in the opinion of the Distributor adversely affecting the ownership, operation, management, business or interests of the Dealer or the Distributor;

(d) Conviction in a court of competent jurisdiction of any Dealer, partner, manager, principal officer or any major stockholder of Dealer for any violation of law, in the opinion of the Distributor, tending to adversely affect the operation of the business of the Dealer or the good name and good will or reputation of the Distributor, Importer, or Manufacturer;

(e) Breach by the Dealer of any of the provisions of this Agreement, including a failure of the Dealer to develop the locality assigned to him,

to the satisfaction of the Distributor (provided, however, that nothing set forth in this Agreement shall be deemed to limit the Dealer to his locality in making sales or in rendering services), or failure to conduct Dealer's business in accordance with any requirements set forth in this Agreement, or the violation by Dealer of any of the rules, regulations and policies issued from time to time by the Distributor, Importer and Manufacturer with respect to products and operations of the Dealer's business.

(B) Upon termination of this Agreement, Dealer shall cease to be an authorized Subaru Dealer, and shall:

(1) Transfer and assign by appropriate documents to the Distributor or its nominee all retail orders for products which Dealer has not filled, and all customer deposits made thereon, and shall deliver to the Distributor the names and addresses of Dealer's customers and of prospective purchasers of the products from Dealer.

(2) Cease in whole or in part to continue to use any trademark or trade name containing the word "Subaru" or of any name belonging to the Distributor, Importer or Manufacturer.

(3) Remove all signs containing any such trademarks and/or trade names.

(4) Render unit for the use originally intended any stationery, printed matter, advertising and advertising material containing any such trademarks and/or trade names, or portion thereof, or name of "Subaru" and discontinue any practices that might make it appear that Dealer continues to handle any of the products.

## XII.

### REPURCHASE OF PRODUCTS BY DISTRIBUTOR

In the event that Distributor shall terminate this Agreement, or in the event that Dealer shall terminate this Agreement, Distributor shall have the first option to purchase from Dealer within fifteen (15) days of the effective date of termination, and dealer shall immediately sell to Distributor upon exercise of such option, the following products in the following manner:

A. Each new, unused, undamaged current model vehicle, together with all factory installed accessories and optional equipment thereon, in Dealer's stock and unsold by Dealer on the effective date of termination, provided such vehicle is in first class saleable condition and is of a type and model being offered for sale by Distributor on such date of termination as a current type or model, and provided further that such vehicle was purchased by Dealer from the Distributor. The price for such vehicle shall be the price paid by Dealer to Distributor, less any price reduction or allowance credited or paid to Dealer, and less all prior refunds, credits, rebates, allowances, discounts and other payments made by Distributor with respect to such vehicle. Delivery of all vehicles reacquired by the Distributor or returned by the Dealer pursuant to the provisions of this subparagraph shall be made at Distributor's place of business,

unless Distributor in writing directs otherwise.

B. All current parts and accessories of the Dealer at the price which is to be paid by the Dealer to the Distributor for such parts and accessories on the date of termination, less ten percent (10%) handling charge and less any cash discounts at the date of termination. Delivery of all such current parts and accessories re-acquired by the Distributor or returned by the Dealer, pursuant to the provisions of this article shall be made at the Distributor's place of business, unless the Distributor in writing directs otherwise, in which event the Dealer at the Dealer's own expense shall pack in boxes all such parts and accessories, all such parts and accessories shall be packed carefully, and at the Distributor's expense shipped to such destination as the Distributor may direct.

C. In the event the Distributor elects to or becomes obligated to purchase any products, as above provided, Dealer agrees that upon request of Distributor, he will promptly comply with any and all applicable laws and requirements which may be necessary or proper to transfer good title to Distributor free of all charges, liens, and encumbrances, including compliance with the Bulk Sales Act of any jurisdiction, all at the expense of the Dealer.

### XIII.

#### NOTICES

All notices required or permitted under and pursuant to this Agreement or given in connection therewith shall be in writing, which may be delivered personally or by first class mail, registered, postage prepaid, or by telegram or cable. All notices to Distributor shall be delivered or directed to the President of Distributor at its principal

place of business indicated below the signature at the end of this Agreement.

XIV.

ASSIGNMENT

Neither this Agreement nor any right hereunder nor interest herein may be assigned by Dealer without the prior written consent of the Distributor through its duly authorized officers.

XV.

WAIVER

The waiver of either party or the failure of either party to claim a breach of any provision of this Agreement, shall not be or be held to be a waiver of any subsequent breach, or as affecting in any way the effectiveness of orders from the Dealer by the Distributor or the continuance of the sale by the Dealer of the products in Dealer's locality or the referring of inquiries to the Dealer by the Distributor shall not be construed as a renewal of this Agreement, nor a waiver of the termination.

XVI.

EXECUTION BY DISTRIBUTOR

This Agreement shall not be void and binding upon the parties hereto unless bearing the signature of the President, Vice-President or <sup>ASSISTANT</sup> Secretary of the Distributor signed at the Distributor's principal office in the State of PENNSYLVANIA, and shall be construed according to the laws of the State of PENNSYLVANIA, and as a contract made in the State of PENNSYLVANIA.

XVII.

REPRESENTATIONS, MERGER OF AGREEMENTS, LIABILITY FOR EXPENDITURES OF PERFORMANCE

The Dealer acknowledges that no representation or statement has been made to him on behalf of the Distributor that is not contained in this Agreement, or that in any way tends to change or modify the terms hereof; or that in any manner prevents this Agreement from becoming effective, and further acknowledges that there is no other agreement or understanding, either oral or in writing, between the parties or their agents affecting this Agreement, or relating to the subject matter hereof. He further acknowledges that nothing herein contained shall impose any liability upon the Distributor for any expenditure made or incurred by Dealer in preparation for performance or in the performance of his obligations under this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this day and year first above written.

Witnessed:

C. A. Frank

Witnessed: [Signature]

SUBARU OF PENNSYLVANIA, INC.

(Name of Distributor)

By: [Signature]

Title: ASSISTANT SECRETARY

Address: 555 E. CITY LINE AVE.

BALA CYNWYD, PENNA. 19004

Cumberland Motors

(Name of Dealer)

By: [Signature]

(Proprietor, ~~President, Secy.~~)

Title: \_\_\_\_\_

Address: 1665 No. Delsea Drive  
Vineland, New Jersey