

## ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT ("**Agreement**") is entered into by and between the City of Lewisville, Texas, a home rule municipality duly acting by and through its City Manager, ("**City**") and DJO, LLC, a Delaware limited liability company ("**Company**") (collectively, "**Parties**").

### W I T N E S S E T H:

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code ("**Statute**"), the City adopted an Economic Incentive Policy for making economic development incentives and grants on June 20, 2016 ("**the Policy Statement**"); and

**WHEREAS**, the Policy Statement constitutes appropriate guidelines and criteria governing economic development agreements to be entered into by the City as contemplated by the Statute; and

**WHEREAS**, in order to maintain and/or enhance the commercial, economic, and employment base of the Lewisville area to the long-term interest and benefit of the City, in accordance with said Statute, the City desires to enter into this Agreement; and

**WHEREAS**, the Company desires to relocate the operations of its primary headquarters; and

**WHEREAS**, the Company intends to maintain a minimum annual payroll of eight million sixty thousand dollars (\$8,060,000.00) at its primary headquarters; and

**WHEREAS**, the Company intends to employ and maintain at least 130 full-time positions at its primary headquarters; and

**WHEREAS**, the City desires to provide, pursuant to the Statute, an incentive to the Company to locate its primary headquarters to the Leased Premises (hereinafter defined) for a term of ten (10) years and to employ at least 130 full-time employees at a minimum annual payroll of eight million sixty thousand dollars (\$8,060,000); and

**WHEREAS**, Lakeside II Center, L.P. ("**Master Landlord**") leases to Teachers Insurance and Association of America, a New York corporation ("**Sublandlord**"), approximately 80,964 rentable square feet area, located on the first and second floor of the building located at 2900 Lake Vista Drive, Lewisville, Texas; and

**WHEREAS**, the Company intends to sublease from Sublandlord a minimum of 40,624 square feet located at 2900 Lake Vista Drive, Suite 200 (consisting of the entire second floor of the building), Lewisville, Texas, and any improvements made by the Company thereupon, (the

**“Leased Premises”**), which is more particularly described in Attachment “A” and labeled as the Leased Premises; and

**WHEREAS**, the City has determined that this Agreement contains sufficient controls to ensure that the above-mentioned public purposes are carried out in all transactions involving the use of public funds and resources in the establishment and administration of the Agreement.

**NOW, THEREFORE**, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the Parties do mutually agree as follows:

## **ARTICLE I TERM**

1.1 The term of this Agreement (**“Term”**) shall be effective on the date that this Agreement is executed by the Parties (**“Effective Date”**) and shall continue for ten (10) years from the date on which the first Annual Grant payment is made to the Company by the City under Section 4.1 of this Agreement, unless sooner terminated as provided herein. This Agreement terminates automatically if the Company has failed to meet the Completion Deadline, hereinafter defined, by December 31, 2020.

## **ARTICLE II DEFINITIONS**

2.1 Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

**“Agreement”** has the meaning set forth in the introductory paragraph of this Agreement.

**“Annual Grant”** has the meaning set forth in Article IV of this Agreement.

**“Business Personal Property”** means tangible personal property, other than inventory or supplies, that is classified by the Denton Central Appraisal District as business personal property, that is owned or leased by the Company, and that is added to the Leased Premises, including, but not limited to, equipment, furniture and fixtures.

**“City”** has the meaning set forth in the introductory paragraph of this Agreement.

**“Company”** has the meaning set forth in the introductory paragraph of this Agreement.

**“Completion Deadline”** has the meaning set forth in Article III of this Agreement.

**“Effective Date”** has the meaning set forth in Article I of this Agreement.

**“Event of Bankruptcy”** means that the Company becomes insolvent or bankrupt, has a receiver or trustee appointed for any part of its property, makes an assignment for the benefit of

its creditors, or any proceeding is commenced either by the Company or against it under any bankruptcy or insolvency laws, which proceeding is not dismissed within sixty (60) days.

**“Facility Based Employees”** means the total number of individuals employed on a full-time basis by the Company at the Leased Premises.

**“Force Majeure”** means any contingency or cause beyond the reasonable control of the Company, including without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, governmental or de facto governmental action including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions (unless caused by acts or omissions of the Company), fire, explosion or flood, and strikes.

**“Grant Year”** means a calendar year, during the Term but after the Completion Deadline, beginning January 1 of the calendar year through and including the following December 31 of the same calendar year.

**“Proportionate Share”** means 50.17% of Real Property ad valorem taxes but not to exceed the actual Real Property ad valorem taxes paid by the Company to Sublandlord.

**“Real Property”** means the real property that is classified by the Denton Central Appraisal District as real property and located at 2900 Lake Vista Drive within the City of Lewisville. A portion of the Real Property is leased by the Company from the Sublandlord (see **“Leased Premises”**).

**“Term”** has the meaning set forth in Article I of this Agreement.

### **ARTICLE III GENERAL PROVISIONS**

3.1 Commencement: As soon as practical after the Effective Date of this Agreement, the Company shall move into the Leased Premises.

3.2 Completion Deadline: The date of the **“Completion Deadline”** shall be defined as the date the Company has hired and begun paying 130 Facility Based Employees at the Leased Premises. In the event of Force Majeure, or if, in the reasonable opinion of the City, the Company has made substantial progress toward the Completion Deadline, additional time may be granted at the City’s discretion.

**ARTICLE IV  
ECONOMIC DEVELOPMENT INCENTIVES**

4.1. Annual Grant. For each Grant Year according to the schedule set forth below and subject to the Company's continued satisfaction of the terms and conditions of this Agreement, the City shall provide to the Company an economic development grant in an amount equal to a certain percentage of (i) ad valorem property taxes owed and paid to the City by Company on the Business Personal Property located at the Leased Premises, and (ii) the Proportionate Share of Real Property taxes paid by the Master Landlord to the City for which the Company is responsible under the Company's sublease with the Sublandlord (the "**Annual Grant**").

<u>Grant Year</u>	<u>Percentage of Business Personal Property Taxes and Percentage of Proportionate Share of Real Property taxes:</u>
1 – 5	Seventy-five percent (75%)
6 – 10	Fifty percent (50%)

4.1.1 The Company shall pay all applicable taxes in accordance with state and local regulations.

4.1.2 The Company shall be paid the Annual Grant by the City in accordance with this Agreement on an annual basis. Each Grant Year, prior to payment of the Annual Grant, the Company shall submit to the City, no later than February 15 of each Grant Year, all of the following: (i) proof of payment of its subject tax liability for its Business Personal Property and Proportionate Share of Real Property; (ii) its Annual Compliance Report shown in Attachment "B"; (iii) a letter of request for payment; and (iv) any other documentation or information required by the City.

4.1.3 Notwithstanding anything to the contrary contained in the Agreement, the Annual Grant shall terminate and be null and void and of no further effect if (i) this Agreement is terminated as provided herein; (ii) the sublease between Company and Sublandlord for the Leased Premises expires or is terminated for any reason; or (iii) the Company suffers an Event of Bankruptcy.

4.2 Fee Grant. The City shall provide to the Company an economic development grant in an amount equal to all building permit fees (not including impact fees), assessed at the time of issuance of the permit, which are directly related to the construction of any improvements at the Leased Premises. Notwithstanding any fee grant, the Company must obtain all permits required by City ordinance for the improvements.

4.2.1 No later than sixty (60) days after the execution of the Agreement, the Company shall submit to the City all of the following: (1) proof of payment of said building

fees; (2) a letter of request for payment; and (3) any other documentation or information required by the City.

4.3 TEF Impact Study Fee Grant. The City shall provide to the Company an economic development grant in an amount equal to the higher of fifty percent (50%) or \$750.00 of the impact study fee charged by Impact DataSource, LLC as part of the Company's application to the State of Texas for the Texas Enterprise Fund (the "**TEF Impact Study Fee Grant**").

4.3.1 No later than sixty (60) days after the execution of the Agreement, the Company shall submit to the City all of the following: (1) proof of payment of said impact study fee; (2) a letter of request for payment; and (3) any other documentation or information required by the City.

## **ARTICLE V AGREEMENT CONDITIONS**

5.1 The Company's eligibility to receive any of the economic development incentives provided for in this Agreement is contingent upon its satisfaction of the following conditions (these conditions are in addition to the specific conditions (if any) that apply to a particular incentive):

5.1.1 Minimum Use Condition. During the Term of this Agreement following the Completion Deadline, the Company shall occupy the Leased Premises as its primary headquarters operations.

5.1.2 Minimum Payroll Condition. During the Term of this Agreement following the Completion Deadline, the Company shall maintain a minimum of eight million sixty thousand dollars (\$8,060,000) in annual payroll for Facility Based Employees.

5.1.3 Minimum Employment Condition. During the Term of this Agreement following the Completion Deadline, the Company shall employ a minimum of one hundred and thirty (130) Facility Based Employees.

5.1.4 Community Support. During the Term of this Agreement, the Company shall support, each Grant Year, a community event, economic development activity, or other charitable contribution, mutually agreed upon by both parties, using the table below as a guide but no less than the minimum amount indicated in the table below.

<u><b>Annual Incentive Value Paid by the City to the Company</b></u>	<u><b>Annual Support Paid by the Company to the City for a Community Event, Economic Development Activity or Other Charitable Contribution</b></u>
\$5,000 to \$10,000	\$1,000
\$10,001 to \$20,000	\$2,500
\$20,001 to \$50,000	\$5,000
\$50,001 to \$75,000	\$10,000
Greater than \$75,001	\$15,000

5.2 The Company must certify annually to the City, through the City's Economic Development Agreement, as to its attainment of the above-stated conditions by submitting an Annual Compliance Report, as shown in Attachment "B" and appropriate supporting documentation, no later than February 15<sup>th</sup> of each Grant Year and continuing until the expiration of the Agreement.

## **ARTICLE VI TERMINATION**

This Agreement may be terminated upon any one of the following:

1. By written agreement of the Parties;
2. Expiration of the Term;
3. By either of the Parties in the event the other Party breaches any of the terms or conditions of this Agreement and such breach is not cured within sixty (60) days after written notice thereof;
4. By the City, if the Company suffers an Event of Bankruptcy; and
5. By the City, if any taxes, assessments or payments owed to the City or the State of Texas by the Company shall become delinquent and not cured within sixty (60) days after written notice thereof (provided, however, that the Company retains the right to timely and properly protest and contest any such taxes or assessments).

In the event the Agreement is terminated by the City pursuant to this Article subsection (3), (4), or (5), the Company shall be ineligible for further economic development incentives pursuant to this Agreement and shall be required to refund all funds received from the City under this Agreement up to the date of termination.

## **ARTICLE VII MISCELLANEOUS**

7.1 The terms and conditions of this Agreement are binding upon the successors and assigns of all Parties hereto. This Agreement cannot be assigned by the Company unless written permission is first granted by the City, which consent shall not be unreasonably withheld, so long as the assignee agrees to be bound by all terms and conditions of this Agreement. It is understood and agreed between the Parties that the Company in performing their obligations thereunder, are acting independently, and the City assumes no responsibility or liabilities in connection therewith to third parties.

7.2 The Company further agrees that the City, its agents and employees, shall have reasonable rights of access to the Leased Premises for inspection purposes in order to ensure that the use and maintenance of the Leased Premises are in accordance with all applicable agreements with the City, including this Agreement, and all applicable state and local laws and regulations, as well as the continuing right, subject to the Company's reasonable security requirements, to inspect the Leased Premises to ensure that the Leased Premises is thereafter maintained, operated, and occupied in accordance with all applicable agreements with the City, provided that with respect to matters concerning this Agreement (i) the City must give the Company reasonable notice by phone, email or letter of any such inspection, and (ii) a representative of the Company shall have the right to accompany the agent or employee of the City who is conducting such inspection. The City represents and warrants that the Leased Premises do not and will not include any property that is owned by a member of the City Council having responsibility for the approval of this Agreement.

7.3 Notices required to be given to any party to this Agreement shall be given personally or by nationally-recognized overnight courier or certified mail with return receipt requested to the party at its address as set forth below, and shall be deemed delivered one (1) day after the date deposited with the overnight courier and three (3) days after the date deposited in the United States' mail:

For City by notice to:

City of Lewisville  
Attn: Economic Development Director  
151 W. Church Street  
P.O. Box 299002  
Lewisville, Texas 75057

For Company by notice to:

DJO, LLC  
1430 Decision Street  
Vista, CA 92081  
Attn: Jeff Sears

With a copy to:

DJO, LLC  
2900 Lake Vista Drive, Suite 200  
Lewisville, Texas 75067  
Attn: General Counsel

Either Party may change the address to which notices are to be sent by giving the other Party written notice in the manner provided in this paragraph.

7.4 No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.

7.5 This Agreement may be modified or rescinded only by a writing signed by both of the Parties or their duly authorized agents.

7.6 Venue for any litigation arising from this Agreement shall lie in Denton County, Texas.

**7.7 THE COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY THE COMPANY'S BREACH OF THIS AGREEMENT OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF THE COMPANY, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, OR THE COMPANY, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

7.8 This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which in the aggregate shall constitute one agreement.



7.9 If any provision contained in this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. In lieu of each invalid, illegal or unenforceable provision, there shall be added a new provision by written agreement of the Parties as similar in terms to such invalid, illegal or unenforceable provision as may be possible and yet be valid, legal and enforceable.

7.10 Whenever the context requires, all words herein shall be deemed to include the male, female, and neuter gender, singular words shall include the plural, and vice versa.

7.11 This Agreement was authorized by action of the City Council, authorizing the City Manager to execute the Agreement on behalf of the City.

(SIGNATURE PAGE FOLLOWS)

**DATED** this the \_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF LEWISVILLE, TEXAS**

\_\_\_\_\_  
Donna Barron, City Manager


ATTEST:

\_\_\_\_\_  
Julie Worster, City Secretary

APPROVED TO FORM:

\_\_\_\_\_  
Lizbeth Plaster, City Attorney

**DJO, LLC**

By: 

Name: Jeff Sears

Title: Vice President of Operations Transformation

Attachment "A"  
Leased Premises  
2900 Lake Vista Drive Lewisville, Suite 200, Texas

Insert Floor Plan here

Attachment “B”  
Annual Compliance Report

Company Name: DJO, LLC

Company Address: 2900 Lake Vista Drive, Suite 200, Lewisville, Texas 75067

Capital Investment Value – 1st Year (documentation required): N/A

Capital Investment Value – Reporting Year (documentation required): N/A

Date of Completion Deadline:

Annual Incentive Value Paid by the City to the Company:

Donation Amount in Support of a City Sponsored Event or Program Annually:

Membership in the Lewisville Chamber of Commerce:

*Please list the dollar amount for the following:*

<b>Current Year Appraised Real Property Value – Land</b>	
<b>Current Year Appraised Real Property Value – Improvements</b>	
<b>Current Year Appraised Business Personal Property Value – Machinery, Equipment and Other BPP</b>	
<b>Current Year Appraised Inventory Value</b>	
<b>Proportionate Share of Property Taxes paid by Company to Sublandlord – Real Property</b>	
<b>Property Taxes Paid – Business Personal Property</b>	
<b>Property Taxes Paid – Inventory Tax</b>	

Attachment "B"  
Annual Compliance Report

*Please provide a copy of your Quarterly Payroll Report along with the following information:*

	Part Time	Full Time
<b>Total Current Employees at End of Reporting Period</b>		
<b>Number of New Employees Added During Reporting Period</b>		

Annual Payroll During Reporting Period:

Average Salary During Reporting Period:

Has construction/installation of planned improvements commenced?                      Yes      No

Has construction/installation of planned improvements been completed?                      Yes      No

Construction Dollars Spent This Reporting Period:

<b>Additional Information to be Attached:</b>
Quarterly Payroll Report
Brief Narrative Highlighting the Progress of the project
If Applicable, a Statement Addressing any Failure to Meet Requirements of the Economic Development Agreement
Letter of Request re: the Economic Development Agreement grants plus supporting documents

I certify on behalf of the Company that, to the best of my knowledge, the information and attachments provided herein are true and accurate and in compliance with the terms of the Economic Development agreement with the City of Lewisville.	
<div style="border-bottom: 1px solid black; margin-bottom: 10px; width: 80%;"></div> Name of Certifying Officer	<div style="border-bottom: 1px solid black; margin-bottom: 10px; width: 80%;"></div> Title
<div style="border-bottom: 1px solid black; margin-bottom: 10px; width: 80%;"></div> Signature of Certifying Officer	<div style="border-bottom: 1px solid black; margin-bottom: 10px; width: 80%;"></div> Date

Telephone:

Fax:

E-mail: