

LEAP WIRELESS INTERNATIONAL INC
 Form 3
 June 07, 2005

FORM 3 UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL

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INITIAL STATEMENT OF BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934,
 Section 17(a) of the Public Utility Holding Company Act of 1935 or Section
 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person * WOKOUN LINDA K (Last) (First) (Middle) 10307 PACIFIC CENTER COURT (Street) SAN DIEGO, CA 92121 (City) (State) (Zip)	2. Date of Event Requiring Statement (Month/Day/Year) 06/06/2005	3. Issuer Name and Ticker or Trading Symbol LEAP WIRELESS INTERNATIONAL INC [LEAP]	4. Relationship of Reporting Person(s) to Issuer (Check all applicable) <input type="checkbox"/> Director <input type="checkbox"/> 10% Owner <input checked="" type="checkbox"/> Officer <input type="checkbox"/> Other (give title below) (specify below) Sr. VP, Mktg & Customer Care	5. If Amendment, Date Original Filed(Month/Day/Year)	6. Individual or Joint/Group Filing(Check Applicable Line) <input checked="" type="checkbox"/> Form filed by One Reporting Person <input type="checkbox"/> Form filed by More than One Reporting Person
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Table I - Non-Derivative Securities Beneficially Owned

1. Title of Security (Instr. 4)	2. Amount of Securities Beneficially Owned (Instr. 4)	3. Ownership Form: Direct (D) or Indirect (I) (Instr. 5)	4. Nature of Indirect Beneficial Ownership (Instr. 5)
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Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

SEC 1473 (7-02)

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

Table II - Derivative Securities Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 4)	2. Date Exercisable and Expiration Date (Month/Day/Year) Date Exercisable Expiration Date	3. Title and Amount of Securities Underlying Derivative Security (Instr. 4) Title Amount or Number of Shares	4. Conversion or Exercise Price of Derivative Security	5. Ownership Form of Derivative Security: Direct (D) or Indirect (I)	6. Nature of Indirect Beneficial Ownership (Instr. 5)
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Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
WOKOUN LINDA K 10307 PACIFIC CENTER COURT SAN DIEGO, CA 92121	Â	Â	Â Sr. VP, Mktg & Customer Care	Â

Signatures

By: Robert J. Irving, Jr., Attorney-in-Fact For: Linda K. Wokoun

06/06/2005

__Signature of Reporting Person

Date

Explanation of Responses:

No securities are beneficially owned

* If the form is filed by more than one reporting person, *see* Instruction 5(b)(v).

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *See* Instruction 6 for procedure.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. p;**Positions with the Company**Mark E. Schwarz 56 Director and Executive

ChairmanWilliam J. Wackermann 49 Chief Executive OfficerJames A. McCarthy 40 Chief Financial Officer

William J. Wackermann

Mr. Wackermann became the Company's Chief Executive Officer in January 2016. He served as Executive Vice President and Publishing Director of Condé Nast, a division of Advance Publications, from 2010 to 2015. Mr. Wackermann also served as Chief Revenue Officer of Condé Nast in 2015. In these roles, he was responsible for revenue growth and marketing oversight of several Condé Nast brands, including Glamour, Condé Nast Traveler, W, Details, Bon Appétit and Brides. Mr. Wackermann previously served as Senior Vice President/Publishing Director at Condé Nast from 2008 to 2010 and Vice President/Publisher Glamour at Condé Nast from 2004 to 2008 (Senior Vice President commencing in 2006).

James A. McCarthy

Mr. McCarthy was appointed Chief Financial Officer of the Company effective April 2016. Prior to joining the Company, Mr. McCarthy had since 2009 served as the Controller of Orchard Media, Inc., a music, video and film distribution company that was ultimately acquired by a subsidiary of Sony Corporation. Previously, he had since 1999 been a Senior Manager at the international accounting firm of Ernst & Young LLP. Mr. McCarthy is a Certified Public Accountant licensed in New York.

Summary Compensation Table

The following table summarizes the compensation earned during the fiscal years ended December 31, 2016 and 2015, by each person who served as an executive officer of the Company at any time during fiscal 2016 (the “Named Executive Officers”).

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Option Awards (\$)¹	All Other Compensation (\$)²	Total (\$)
Mark E. Schwarz	2016	150,000	---	---	---	150,000
Executive Chairman	2015	150,000	---	---	---	150,000
William J. Wackermann	2016	466,057	---	731,893	---	1,197,950
Chief Executive Officer	2015	---	---	---	---	---
James A. McCarthy	2016	154,358	15,000	101,151	---	270,509
Chief Financial Officer	2015	---	---	---	---	---
Alex Vaickus ³	2016	32,403	---	---	208,333	240,736
Chief Executive Officer	2015	500,000	---	---	---	500,000
David S. Chaiken ⁴	2016	85,528	---	---	45,833	131,361
Chief Accounting Officer	2015	275,000	---	38,949	---	313,949

¹ Reflects the fair value of each stock option estimated on the date of grant using the Black-Scholes option pricing model. Assumptions used in calculating this amount are included in Note 10 to the financial

statements included in the Company's Annual Report Form 10-K. On January 26, 2016, Mr. Wackermann was granted options to purchase 200,000 shares of common stock at the fair market value on the date of grant of \$6.50 per share. On April 25, 2016, Mr. McCarthy was granted options to purchase 30,000 shares of common stock at the fair market value on the date of grant of \$7.36 per share. Both grants vest in five equal annual installments and expire ten years from the date of grant.

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Represents post-employment severance payments.

³The employment of Mr. Vaickus was terminated as of January 26, 2016. All options held by Mr. Vaickus terminated unexercised in connection with the termination of his employment.

⁴Mr. Chaiken was appointed Chief Accounting Officer on January 23, 2015, and his employment was terminated on April 22, 2016. All options held by Mr. Chaiken terminated unexercised in connection with the termination of his employment.

Employment Agreements

Mr. Wackermann entered into an Employment Agreement with the Company effective January 26, 2016. Under the Employment Agreement, Mr. Wackermann is paid (a) a base annual salary of \$500,000 and (b) certain performance bonuses ranging from between 7.5% and 15% of earnings before interest, taxes, depreciation and amortization ("EBITDA") of the Company's wholly owned subsidiaries in excess of certain thresholds starting at \$5.5 million per year. The calculation of EBITDA includes Mr. Wackermann's base salary and other compensation related expense, but excludes the relevant bonus, for purposes of determining whether an EBITDA threshold is met. In accordance with the Employment Agreement, Mr. Wackermann has received two consecutive annual grants of options to purchase 200,000 shares of the Company's common stock at the fair market value on the date of grant, which stock options vest in five equal annual installments and terminate ten years from the date of grant. Subsequent grants will be determined in the discretion of the Board of Directors. The term of the Employment Agreement is two (2) years, subject to an annual one year renewal unless notice of non-renewal is provided by either party prior to ninety (90) days before the end of the applicable term.

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Under his Employment Agreement, in the event that Mr. Wackermann's employment is terminated without cause or for good reason, he is entitled to receive continued salary for the lesser of (a) the remaining months on the term of the Employment Agreement and (b) the Number of Qualifying Months. The "Number of Qualifying Months" means three (3) months plus, for each twelve (12) month renewal period that occurred under the Employment Agreement, one (1) additional month. Pursuant to the Employment Agreement, Mr. Wackermann is restricted from competing with the Company for a period of one year from the date of termination and is subject to certain covenants of confidential and non-solicitation.

Mr. McCarthy has entered into an employment letter with the Company confirming his at-will employment. The employment letter provides for a starting base salary of \$225,000 per year and a discretionary annual bonus targeted at 30% of base salary based on the achievement of financial, strategic and/or personal goals to be set by the Board of Directors. Mr. McCarthy is eligible to participate in the Company's 2015 Incentive Plan and is entitled to all other benefits offered by the Company to its employees. In accordance with the employment letter, Mr. McCarthy was initially granted options to purchase 30,000 shares of the Company's common stock at an exercise price equal to the fair market value on the date of grant, which stock options vest in five equal annual installments and terminate ten years from the date of grant. In the event Mr. McCarthy's employment with the Company is terminated without cause, he will be entitled to receive 60 days of base salary. Pursuant to the employment letter, Mr. McCarthy is restricted from competing with the Company for a period of one year from the date of termination and is subject to certain covenants of confidential and non-solicitation.

Mr. Vaickus entered into an Employment Agreement with the Company on August 29, 2012 and was subsequently appointed Chief Executive Officer on September 25, 2012. The Employment Agreement provided for Mr. Vaickus to be paid (a) a base annual salary of \$500,000, and (b) an annual performance bonus ranging from 7.5% to 15% of pre-bonus EBITDA (as defined therein) in excess of certain thresholds starting at \$5.5 million per year. The Employment Agreement also provided for the annual grant to Mr. Vaickus of options to purchase 100,000 shares of the Common Stock at an exercise equal to the closing price on the date of grant, with such options to vest in five equal annual installments and terminate ten years from the grant date.

The employment of Mr. Vaickus was terminated by the Company as of January 26, 2016. In accordance with the terms of the Employment Agreement, the Company paid to Mr. Vaickus his base salary of \$41,667 per month for five months following the date of termination. All options held by Mr. Vaickus terminated unexercised in connection with the termination of his employment. Pursuant to the Employment Agreement, Mr. Vaickus was restricted from competing with the Company for a period of one year from the date of termination and is subject to certain covenants of confidential and non-solicitation.

Mr. Chaiken was appointed Chief Accounting Officer of the Company on January 23, 2015, pursuant to an Offer Letter providing for an annual base salary of \$275,000, increasing to \$300,000 upon the satisfaction of certain objectives. Mr. Chaiken was also eligible to earn an annual cash bonus of up to \$40,000 based on the achievement of certain targets. In accordance with the Offer Letter, Mr. Vaickus was also granted options to purchase 10,000 shares of the Common Stock at an exercise price equal to the closing price on the date of grant, such options to vest in five

equal annual installments and terminate ten years from the grant date.

The employment of Mr. Chaiken was terminated by the Company as of April 22, 2016. Pursuant to the terms of the Offer Letter, Mr. Chaiken was paid his base salary of \$45,833 per month for 60 days following the date of termination. All options held by Mr. Chaiken terminated unexercised in connection with the termination of his employment. Pursuant to the Offer Letter, Mr. Chaiken was restricted from competing with the Company for a period of one year from the date of termination and is subject to certain covenants of confidential and non-solicitation.

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Except as described above, the Company has no plans or arrangements that provide for payment to any Named Executive Officer in connection with the resignation, retirement or other termination of such Named Executive Officer or a change in control of the Company.

Outstanding Equity Awards at Fiscal Year-End Table

The following table sets forth certain information regarding equity awards held by the Named Executive Officers as of December 31, 2016, consisting solely of unexercised stock options.

<u>Name</u>	Number of Securities		Option Exercise	Option
	<u>Underlying Unexercised Options¹</u>		<u>Price (\$)</u>	<u>Expiration Date</u>
	<u>Exercisable (#)</u>	<u>Unexercisable (#)</u>		
Mark E. Schwarz	---	---	---	---
William J. Wackermann	---	200,000	6.50	01/26/2026
James A. McCarthy	---	30,000	7.36	04/25/2026

¹ All outstanding options vest in five equal annual installments from the date of grant.

RELATED PARTY TRANSACTIONS

The Company's corporate headquarters are located at 200 Crescent Court, Suite 1400, Dallas, Texas 75201, which are also the offices of NCM. Pursuant to a services agreement with NCM, the Company receives the use of NCM's facilities and equipment, as well as accounting, legal and administrative services from employees of NCM, on a month-to-month basis for a fixed fee of \$2,500 per month. The Company paid \$30,000 to NCM in each of fiscal 2016 and 2015 pursuant to the services agreement. Mr. Schwarz is the Chairman, Chief Executive Officer and Portfolio Manager of NCM, which is the general partner of Newcastle LP. Messrs. Coleman and Dvorak are Managing Directors of NCM.

INDEPENDENT AUDITORS

The firm of Montgomery Coscia Greulich LLP (“MCG”) has served as the Company’s independent registered public accounting firm for the 2016 and 2015 fiscal years. The following table presents fees for professional services rendered by MCG for the audit of the Company’s consolidated financial statements for the fiscal years ended December 31, 2016 and 2015, as well as fees billed for other services rendered by MCG during each period.

	<u>Fiscal 2016</u>	<u>Fiscal 2015</u>
Audit Fees ¹	\$203,300	\$165,000
Audit-Related Fees	---	---
Tax Fees ²	\$4,306	\$41,094
All Other Fees	---	---

¹ Represents fees for audit of the financial statements contained in the Company’s Annual Report on Form 10-K and review of financial statements included in its Quarterly Reports on Form 10-Q. A portion of the fees attributable to the indicated fiscal year were paid in the subsequent fiscal year.

² Represents fees for professional services relating to tax compliance, tax advice and tax planning.

All services to be performed by the Company’s independent registered public accounting firm must be approved in advance by the Audit Committee. Limited amounts of services (other than audit, review or attest services) may be approved by one or more members of the Audit Committee pursuant to authority delegated by the Audit Committee, provided each such approved service is reported to the full Audit Committee at its next meeting. All of the services performed by MCG for the 2016 and 2015 fiscal years were pre-approved by the Audit Committee.

Audit Committee Report

The Audit Committee of the Board is responsible for providing independent, objective oversight of the Company’s accounting functions and internal controls. The Audit Committee is currently composed of three directors and acts under a written charter approved and adopted by the Board. The Audit Committee reviews its charter on an annual basis. Each of the members is independent as defined by all Nasdaq and SEC requirements. The Board annually reviews the relevant definitions of independence for audit committee members and makes an annual determination of

the independence of Audit Committee members.

The Board has determined that each member of the Audit Committee is an “audit committee financial expert,” as defined by SEC rules and regulations. This designation does not impose any duty, obligation or liability that is greater than is generally imposed on a member of the Audit Committee and the Board, and designation as an audit committee financial expert does not affect the duty, obligation or liability of any member of the Audit Committee or the Board.

The Audit Committee reviewed and discussed with management the Company’s audited financial statements for the fiscal year ended December 31, 2016. It also discussed with MCG the matters required to be discussed by Statement on Auditing Standards No. 61, as amended, as adopted by the Public Company Accounting Oversight Board (the “PCAOB”). In addition, the Audit Committee has received the written disclosures and the letter from MCG required by applicable requirements of the PCAOB regarding MCG’s communications with the Audit Committee concerning independence and the Audit Committee discussed with MCG that firm’s independence.

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The Audit Committee is responsible for recommending to the Board that the Company's financial statements be included in the Company's annual report. Management is responsible for the preparation, presentation, and integrity of the Company's financial statements, accounting and financial reporting principles, internal controls and procedures designed to ensure compliance with accounting standards, applicable laws, and regulations. The Company's independent auditor, MCG, is responsible for performing an independent audit of the consolidated financial statements and expressing an opinion on the conformity of those financial statements to generally accepted accounting principles.

Based on the discussions with MCG concerning the audit, the financial statement review, and other such matters deemed relevant and appropriate by the Audit Committee, the Audit Committee recommended to the Board that the audited financial statements for the fiscal year ended December 31, 2016 be included in the Company's 2016 Annual Report on Form 10-K for filing with the SEC.

Submitted to the Board by the undersigned members of the Audit Committee.

Audit Committee

Mark Pape (Chairman)
James Roddey

Jeffrey Utz

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information as of the Record Date, concerning beneficial ownership of the Common Stock of the Company by:

- ▲Any person or group known to beneficially own more than 5% of the Common Stock;
- ◆Each current director and current executive officer of the Company; and
- ▲All current directors and current executive officers as a group.

The information provided in the table is based on the Company's records, information filed with the SEC and other information provided to the Company. The number of shares beneficially owned by each person or group is determined under SEC rules, and the information is not necessarily indicative of ownership for any other purpose.

Explanation of Responses:

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Under such rules, beneficial ownership includes any shares as to which the person or group has sole or shared voting or investment power and includes any shares that the person or group has the right to acquire within 60 days after the determination date through the exercise of any stock option or other right. Unless otherwise indicated, (a) all persons have sole voting and investment power (or share such powers with their spouse) with respect to the shares shown as beneficially owned by them, (b) the mailing address for all persons is the same as that of the Company, and (c) the directors and current executive officers have not pledged as security any of the shares beneficially owned by them.

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Beneficial Owner	No. of Shares	
	Beneficially Owned	Percent Of Class
<u>5% Beneficial Owners:</u>		
Newcastle Partners, L.P. ^{1,3}	2,430,725	45.2
Newcastle Capital Management, L.P. ¹		
Newcastle Capital Group, L.L.C. ¹		
NCM Services, Inc. ¹		
Schwarz 2012 Family Trust ¹		
Mark E. Schwarz ¹		
Clinton J. Coleman ¹		
James A. Dvorak ¹		
Lorex Investment AG ^{2,3}	1,033,855	19.2
Horst-Dieter Esch ^{2,3}		
Peter Marty ²		
Wynnefield Capital, Inc. ⁴	305,998	5.7
Wynnefield Capital Management, LLC ⁴		
Wynnefield Capital, Inc. Profit Sharing Plan ⁴		
Wynnefield Small Cap Value Offshore Fund, Ltd. ⁴		
Wynnefield Partners Small Cap Value, L.P. ⁴		
Wynnefield Partners Small Cap Value, L.P. ⁴		
Nelson Obus ⁴		
Joshua Landes ⁴		
Ralph Bartel ⁵	306,425	5.7
<u>Directors and Current Executive Officers:</u>		
Mark E. Schwarz ^{1,3}	2,430,725	45.2
Clinton J. Coleman ⁵	---	---
James A. Dvorak ⁵	---	---
Horst Dieter Esch ^{2,3}	1,033,855	19.2
Mark E. Pape	---	---
James C. Roddey	---	---
Jeffrey R. Utz	---	---
William J. Wackermann ⁶	40,000	*
James A. McCarthy ⁶	6,000	*
All directors and Named Executive Officers	3,510,580	64.7

*Less than 1%.

¹ All shares are held by Newcastle LP. The general partner of Newcastle LP is NCM, the general partner of NCM is Newcastle Capital Group, L.L.C. ("NCG"), the sole member of NCG is NCM Services, Inc. ("NCMS"), the sole

Explanation of Responses:

shareholder of NCMS is the Schwarz 2012 Family Trust (“Schwarz Trust”) and the sole trustee of the Schwarz Trust is Mark E. Schwarz. Further, Newcastle LP, NCM, NCG, NCMS, the Schwarz Trust, Mr. Schwarz, Mr. Coleman and Mr. Dvorak may be considered a “group” for purposes of Section 13(d)(3) of the Exchange Act. Accordingly, each of NCM, NCG, NCMS, the Schwarz Trust, Mr. Schwarz, Mr. Coleman and Mr. Dvorak may be deemed to beneficially own the shares of Common Stock directly owned by Newcastle LP. Each of NCM, NCG, NCM Services, the Schwarz Trust, Mr. Schwarz, Mr. Coleman and Mr. Dvorak disclaims beneficial ownership of the shares held by Newcastle LP except to the extent of their respective pecuniary interest therein.

All shares are held by Lorex. Mr. Esch is the sole stockholder of Lorex and shares voting and dispositive power over the shares held by Lorex with Peter Marty, its sole officer and director. Accordingly, each of Mr. Esch and Mr. Marty may be deemed to beneficially own the shares of Common Stock directly owned by Lorex. The address of Lorex is ²c/o Treuhand – u. Revisionsgesellschaft Mattig-Suter and Postner AG, Industriestrasse 22, Zug, CH-6302, Switzerland. The address of Dieter Esch is Carretera Transpeninsular Km. 27.5, San Jose del Cabo, B.C.S. Mexico 23400. The address of Peter Marty is c/o Mattig-Suter und Partner, Bahnhofstrasse 28, Schwyz, CH-6431, Switzerland.

Newcastle LP, Lorex and Mr. Esch are parties to a Mutual Support Agreement pursuant to which they have agreed to ³vote their shares in a certain manner with respect to the election of directors of the Company. (See, *Proposal No. 1 - Election of Directors – Arrangements Regarding Election of Directors*.) Newcastle LP, on the one hand, and Lorex and Mr. Esch, on the other hand, each disclaim beneficial ownership of shares held by the other.

As reported in Schedule 13G filed February 14, 2017. Includes 275,065 shares held by Wynnefield Capital, Inc. Profit Sharing Plan, 5,886 shares held by Wynnefield Small Cap Value Offshore Fund, Ltd., 15,644 shares held by Wynnefield Partners Small Cap Value, L.P. I and 9,403 shares held by Wynnefield Partners Small Cap Value, L.P. ⁴Messrs. Obus and Landes are each co-managing member of Wynnefield Capital Management, LLC (the general partner of Wynnefield Partners Small Cap Value, L.P. and Wynnefield Partners Small Cap Value, L.P. I), a principal executive officer of Wynnefield Capital, Inc. (the investment manager of Wynnefield Small Cap Value Offshore Fund, Ltd.), and a co-trustee of Wynnefield Capital, Inc. Profit Sharing Plan. The address of all such persons is 450 Seventh Avenue, Suite 509, New York, New York 10123.

⁵As reported in Schedule 13G filed December 14, 2016. Mr. Bartel's address is Casella postale 823, 6612 Ascona , Switzerland.

⁶Consists solely of shares which may be acquired pursuant to stock options exercisable on or within 60 days after the Record Date.

Section 16(a) Beneficial Ownership Reporting Compliance

The Company's executive officers, directors and beneficial owners of more than 10% of the Common Stock are required to file reports of ownership and changes in ownership of the Common Stock with the SEC. Based solely upon information provided to the Company by individual directors, executive officers and beneficial owners, the Company believes that all such reports were timely filed during and with respect to the fiscal year ended December 31, 2016.

Proxy Solicitation

Explanation of Responses:

This solicitation of proxies is being made on behalf of the Board and the cost of preparing, assembling and mailing this Proxy Statement is being paid by the Company. In addition to solicitation by mail, Company directors, officers and employees (none of whom will receive any compensation therefor in addition to their regular compensation) may solicit proxies by telephone or other means of communication. Arrangements will also be made with brokerage firms and other custodians, nominees and fiduciaries that hold the voting securities of record for the forwarding of solicitation materials to the beneficial owners thereof. The Company will reimburse such brokers, custodians, nominees and fiduciaries for reasonable out-of-pocket expenses incurred by them in connection therewith.

Annual Report

The 2016 Annual Report is being sent with this Proxy Statement to each stockholder. The 2016 Annual Report is also available at <http://wilhelmina.com/new-york/investor-relations>. However, the 2016 Annual Report is not to be regarded as part of the proxy soliciting materials.

THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS

PROXY

FOR THE ANNUAL MEETING OF STOCKHOLDERS OF

WILHELMINA INTERNATIONAL, INC.

TO BE HELD JUNE 13, 2017

The undersigned hereby appoints Mark E. Schwarz, William J. Wackermann and James A. McCarthy, and each of them individually, as the lawful agents and Proxies of the undersigned, with full power of substitution, and hereby authorizes each of them to represent and vote, as designated below, all shares of Common Stock of Wilhelmina International, Inc. held of record by the undersigned as of April 21, 2017, at the Annual Meeting of Stockholders to be held on June 13, 2017, or at any adjournment thereof. The undersigned hereby revokes all previous proxies relating to the shares covered hereby and confirms all that said Proxies may do by virtue hereof.

1. ELECTION OF DIRECTORS:

FOR all nominees listed below

[] WITHHOLD AUTHORITY to vote for all nominees listed below
(except as marked to the contrary)

Instructions: To *withhold* authority to vote for any nominee, mark the space beside the nominee's name with an "X".

Mark E. Schwarz _____ Clinton J. Coleman _____ James A. Dvorak _____ Horst-Dieter Esch _____

Mark E. Pape _____ James C. Roddey _____ Jeffrey R. Utz _____

2. APPROVAL OF PREFERRED STOCK

ELIMINATION AMENDMENT:

[] FOR **[] AGAINST** **[] ABSTAIN**

APPROVAL OF COMMON

3. STOCK REDUCTION

AMENDMENT:

[] FOR **[] AGAINST** **[] ABSTAIN**

4.

Explanation of Responses:

RATIFICATION OF APPOINTMENT OF
INDEPENDENT REGISTERED PUBLIC
ACCOUNTING FIRM:
[] FOR [] AGAINST [] ABSTAIN

5. **OTHER BUSINESS:** In their discretion, the Proxies are authorized to vote on any other matter which may properly come before the Annual Meeting or any adjournment thereof.

When properly executed, this proxy will be voted in the manner directed herein by the undersigned shareholder. IF NO DIRECTION IS SPECIFIED, THIS PROXY WILL BE VOTED **FOR** THE ELECTION OF ALL DIRECTORS PROPOSED IN ITEM 1, **FOR** APPROVAL OF THE PREFERRED STOCK ELIMINATION AMENDMENT, **FOR** APPROVAL OF THE COMMON STOCK REDUCTION AMENDMENT AND **FOR** THE RATIFICATION OF APPOINTMENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM.

Please sign below exactly as your shares are held of record. When shares are held by joint tenants, both should sign. When signing as attorney, executor, administrator, trustee or guardian, please give full title as such. If a corporation, please sign in full corporate name by President or other authorized officer. If a partnership, please sign in partnership name by authorized person.

Date: _____, 2017

Signature

Title

Signature, if held jointly:

PLEASE MARK, SIGN, DATE AND RETURN THIS PROXY PROMPTLY, USING THE ENCLOSED ENVELOPE. PLEASE CHECK THIS BOX IF YOU INTEND TO BE PRESENT AT THE ANNUAL MEETING OF STOCKHOLDERS.