Form 61-58

State of Connecticut
OFFICE OF SECRETARY OF THE STATE } SS. HARTFORD.

I hereby certify that the foregoing is a true copy of record in this office

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed the Seal of said State, at Hartford, this 23rd day of August A.D., 19 71

Secretary of the State

[Conformed Copy]

CERTIFICATE OF MERGER

OF

WAYNE CANDIES, INC.
(an Indiana corporation)

INTO

W. R. GRACE & CO.
(a Connecticut corporation)

1. The name of the surviving corporation in the merger is W. R. Grace & Co., a Connecticut corporation.

2. The Plan of Merger is as set forth in an Agreement and Plan of Merger of Wayne Candies, Inc. (the "Company") into W. R. Grace & Co. ("Grace") dated July 30, 1971, a true and complete copy of which is attached hereto and made a part hereof.

3. The Plan of Merger was adopted by the merging corporations in the following manner:

(a) The Plan of Merger was approved by resolutions adopted by the Board of Directors of each of the merging corporations.

(b) The Plan of Merger was approved by vote of the shareholders of the Company and as to the Company:

(i) The shareholder vote required to adopt the Plan of Merger was the affirmative vote representing at least a majority of the shares of its outstanding common stock, no par value, its only class of capital stock outstanding;

(ii) The number of shares outstanding and entitled to vote thereon was 33,116 shares of common stock;

(iii) The voting power of such common stock was 33,116 votes; and

(iv) The vote in favor of the Plan of Merger was 33,116 affirmative votes of the holders of common stock.

(c) The shareholders of Grace did not vote on the Plan of Merger and such vote was not required by virtue of the provisions of Section 33-366(b)(2) of the Connecticut Stock Corporation Act because the Plan of Merger will not effect any change in or amendment to the certificate of incorporation of Grace, and the shares to be issued under the Plan of Merger could have been issued by the Board of Directors of Grace without further authorization of the shareholders of Grace. The manner of adoption of the Plan of Merger was the approval thereof, by resolution adopted, pursuant to Section 33-364 of the Connecticut Stock Corporation Act, by the Board of Directors of Grace at a meeting thereof duly called, convened and held on July 1, 1971.

Dated this 30th day of July, 1971.

W. R. GRACE & Co.

By s/THOMAS E. HANIGAN, JR.
Vice President

[SEAL]

s/LEO A. LARKIN
Secretary

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

On this 28th day of July, 1971, personally appeared THOMAS E. HANIGAN, JR. and LEO A. LARKIN and made oath to the truth of the above certificate insofar as it pertains to W. R. GRACE & CO., before me.

s/GAIL E. WOOD

Notary Public

[SEAL]

GAIL E. WOOD
Notary Public, State of New York
No. 24-4334808
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1973

WAYNE CANDIES, INC.

By s/JOHN H. BLEKE

President

[SEAL]

s/RICHARD S. DICKMEYER

Secretary

STATE OF INDIANA
COUNTY OF ALLEN } ss.:

On this 29th day of July, 1971, personally appeared JOHN H. BLEKE and RICHARD S. DICKMEYER and made oath to the truth of the above certificate insofar as it pertains to WAYNE CANDIES, INC., before me.

s/ALLEN L. MERTENS

Notary Public

My commission expires Feb. 17, 1973

[SEAL]

FILED
11:00 A.M. JUL 30 1971 P.M.
GLORIA SCHAFFER, Secretary of State
By: F. S. HOFFER, JR.

AGREEMENT AND PLAN OF MERGER

of

WAYNE CANDIES, INC.

into

W. R. GRACE & CO.

AGREEMENT AND PLAN OF MERGER dated July 30, 1971 made and entered into by and between WAYNE CANDIES, INC. (herein called "Wayne"), an Indiana corporation having its executive office at 1501 East Berry Street, Fort Wayne, Indiana 46801, and W. R. GRACE & Co. (herein called "Grace"), a Connecticut corporation having its executive office at 3 Hanover Square, New York, New York 10004.

WHEREAS the laws of the States of Connecticut and Indiana permit the merger of Wayne into Grace;

WHEREAS the Board of Directors of Grace and the Board of Directors of Wayne deem it desirable and in the best interests of their respective corporations and shareholders to merge Wayne into Grace, and have approved this Plan for that purpose;

WHEREAS under the laws of the State of Connecticut none of the shareholders of Grace is entitled to vote on the merger contemplated by this Plan; and

WHEREAS the parties hereto intend that the merger contemplated by this Plan be a reorganization within the meaning of Section 368(a)(1)(A) of the Internal Revenue Code of 1954, as amended,

NOW THEREFORE, in consideration of the covenants, agreements, representations and warranties contained in this Agreement, and in order to prescribe the terms and conditions of the merger contemplated by this Agreement and the manner of carrying such merger into effect, the parties hereto hereby agree, subject to the conditions set forth in this Agreement, as follows:

1. **Definitions.** As used in this Agreement the following terms have the meanings set forth in this Section 1:

(a) "Additional Shares" means the shares of Grace Common Stock, if any, to be issued pursuant to the provisions of §3 hereof.

(b) "Company" or "Companies" means both Wayne and the Subsidiary, jointly and severally, wherever the context permits.

(c) "Company Assets" means the assets of both Wayne and the Subsidiary.

(d) "Company Business" means the business derived from and after the Effective Date from the ownership or operation of the Company Assets by Grace.

(e) "Effective Date" means the Effective Date of the merger contemplated by this Agreement as defined in §4 of this Agreement.

(f) "Grace Common Stock" means the common stock, par value $1 per share, of Grace.

(g) "Shareholders" means the Shareholders of record of Wayne as of the Effective Date.

(h) "Subsidiary" means Wayne Candies Properties, Inc., an Indiana corporation.

(i) "Wayne Stock" means the shares of Wayne common stock, no par value.

(j) "1971 Balance Sheet" means the Balance Sheet referred to in §6 of this Agreement.

2. **Merger; Conversion of Stock.** Wayne and Grace are the constituent corporations as contemplated by the General Corporation Act of the State of Indiana and the merging corporations as contemplated by the Stock Corporation Act of the State of Connecticut. On the Effective Date and pursuant to the General Corporation Act of the State of Indiana and the Stock Corporation Act of the State of Connecticut:

(a) Wayne shall be merged with and into Grace; and Grace (one of the constituent and merging corporations) shall be the surviving corporation.

(b) The corporate name of the surviving corporation shall be "W. R. Grace & Co."

(c) The laws which are to govern the surviving corporation shall be the laws of the State of Connecticut.

(d) The Certificate of Incorporation of the surviving corporation shall be the Certificate of Incorporation of Grace in effect on the Effective Date which shall remain unchanged and unaffected by the merger until amended as provided by law.

(e) The By-Laws of the surviving corporation shall be the By-Laws of Grace in effect on the Effective Date which shall remain unchanged and unaffected by the merger until amended as provided by law.

(f) The persons who are the directors of Grace on the Effective Date shall continue as directors of the surviving corporation until their respective successors are duly elected and qualified.

(g) The persons who are officers of Grace on the Effective Date shall continue as such officers of the surviving corporation until the Board of Directors of the surviving corporation shall otherwise determine.

(h) The capital stock of each of the constituent and merging corporations shall be treated as follows:

(i) All shares of all classes of stock of Grace which on the Effective Date have been issued, whether outstanding or held in the treasury of Grace, shall remain unchanged and shall not be affected by the merger.

(ii) Each share of Wayne Common Stock (except shares owned by or held in the treasury of any of the Companies) which is issued and outstanding on the Effective Date and all rights in respect thereof shall, by virtue of the merger and without any action on the part of the holder thereof, automatically and forthwith become and be converted into 1.79659 fully-paid and non-assessable shares of Grace Common Stock and each share of Wayne Common Stock which on the Effective Date is owned or held in the treasury of Wayne shall be cancelled and cease to exist and no shares of stock of Grace shall be issued therefor under this Agreement.

3. **Additional Shares.** (a) On or before April 30, 1973, Grace shall issue that number of shares of Grace Common Stock which, when valued at the higher of $35 or the average of the closing prices of Grace Common Stock on the New York Stock Exchange during the first 60 trading days of 1973, shall equal eight times the amount, if any, by which the Average 1971-1972 Earnings (as hereinafter defined in this Section 3) exceeds $163,000. The shares of Grace Common Stock, if any, issued in accordance with the provisions of this Subsection 3(a) shall be distributed prorata to the Shareholders.

(b) On or before October 31, 1973, if during the first 60 trading days following June 30, 1973 the arithmetic average (the "Arithmetic Average") of the closing price per share of Grace Common Stock on the New York Stock Exchange is less than $35.00 per share, Grace shall issue to each Shareholder that number of shares of Grace Common Stock which, when added to the number of shares of Grace Common Stock theretofore issued to such Shareholder pursuant to this Agreement will be equal to the quotient obtained by dividing the Guaranteed Value (as hereinafter defined) by the Arithmetic Average, or by $25.00, whichever is higher.

"Guaranteed Value" for purposes of this subsection 3(b) with respect to each shareholder shall mean the dollar value obtained by multiplying the number of shares of Grace Common Stock received by such shareholder pursuant to this Agreement by $35.00; provided, however, that if such shareholder shall prior to June 30, 1973, have sold or otherwise disposed of any shares of Grace common stock received by him pursuant to this Agreement and the closing price per share for Grace Common Stock on the New York Stock Exchange on the date of such sale or disposition exceeded $35.00 per share, the number of shares of Grace common stock deemed to be held by such shareholder for purposes of this computation of Guaranteed value shall be reduced by the number of shares so sold or otherwise disposed of. For the purposes of this paragraph, a gift by any shareholder shall not be deemed to be a sale or other disposition, provided that the donee does not sell or otherwise dispose of the shares of Grace Common Stock received by him prior to June 30, 1973. If such donee does sell or otherwise dispose of any such shares prior to June 30, 1973, such sale or disposition by the donee shall be deemed a sale or disposition by the shareholder at the time the shares are sold or otherwise disposed of by the donee.

The maximum number of shares which Grace shall be obligated to deliver pursuant to this Section 3 shall under no circumstances exceed 59,496 shares. It is agreed that some of the shares of Grace common stock so issued shall be in payment of interest at the rate of 4% simple interest, per annum, computed, for the period from the Effective Date to the date of issuance of such shares, in accordance with U.S. Treasury Regulation Section 1.483-1. The right to receive the shares to be issued pursuant to this Section 3 shall not be assignable by the Shareholders (except by operation of law, including descent and distribution, and by will).

In the event that any shareholder is entitled to a fractional share of Grace common stock pursuant to this Agreement, the aggregate number of shares of Grace common stock delivered to such shareholder hereunder shall be decreased to the next lower number of full shares.

The "Average 1971-1972 Earnings", for the purposes hereof, shall mean one-half of the net income for the period January 1, 1971 through December 31, 1972 derived from the ownership and operation of the Company Assets, as such assets may be changed by reason of purchases or sales or as the result of cash contributions or allowances from other divisions or operating units of Grace, or the retention and/or investment of cash generated by earnings from such assets, computed in accordance with generally accepted accounting principles applied on a basis consistent with prior periods and subject to the following adjustments (including the tax effects, if any, thereof):

(i) The provision for Federal and State income taxes shall be an amount equal to the sum of (1) all Federal income taxes (including deferred taxes) which would be accruable if the Company Business were incorporated and the corporation so formed were filing a single, separate income tax return prepared without regard to (A) the surtax exemption presently provided in Section 11(d) of the Internal Revenue Code of 1954, or in any similar section that may hereafter be enacted or (B) any carry-over or carry-back to or from a period prior to January 1, 1971 or after December 31, 1972, and (2) all other taxes accruable with respect to the Company Business as if it were filing a separate tax return with respect thereto; and

(ii) There shall be deducted a charge from and after the Effective Date on the portion of any cash contributions or advances from Grace, including without limitation the Treasurer's or Controller's division or other operating unit of Grace, in excess of (1) the amount of any cash transferred to Grace as part of the Company Assets and (2) the amount of any cash generated by the Company Business which is transmitted to another division or operating unit of Grace, at a rate of interest of 110% of the prime rate charged by the First National City Bank in New York City during the period any such excess exists; and

(iii) There shall be eliminated gains realized and losses suffered on the sale, exchange, or other disposition or destruction of capital assets, real property, or other property of a character which is subject to the allowance for depreciation provided in the Internal Revenue Code; and

(iv) There shall be eliminated charges or credits which would in accordance with generally accepted accounting principles, be classified as "Extraordinary Items" or "Prior Period Adjustments" (except to the extent that any Prior Period Adjustments relate to the results of operations in the calendar years 1971 through 1972 inclusive).

(v) There shall be excluded $4,000 in legal expenses for the year 1971.

Within ninety (90) days after December 31, 1972, or as soon as practicable thereafter, Grace shall cause Price Waterhouse & Co. to prepare and deliver to Grace, and Grace shall deliver to the Shareholders, a statement settting forth the Average 1971-1972 Earnings and the computation thereof. Said statement shall be prepared in such reasonable detail as shall be sufficient in accordance with the provisions of this Agreement. The determination of the Average 1971-1972 Earnings shall be conclusively binding upon Grace and the Shareholders unless the Shareholders notify Grace within thirty days of receipt thereof that a majority of them object to such determination, in which event the determination shall be made by Arthur Andersen & Co., the cost to be shared equally by Grace and the Shareholders.

4. **Effective Date of Merger; Effect of Merger; Further Assurances.** The effective date of the merger contemplated by this Agreement (herein called the "Effective Date") shall be the date upon which the last of the following actions is completed: (a) a Certificate of Merger pursuant to Section 33-367 of the Stock Corporation Act of the State of Connecticut, is filed with the Secretary of State of the State of Connecticut in accordance with such Section 33-367, and (b) Articles of Merger pursuant to Section 32 of the General Corporation Act of the State of Indiana are filed with the Secretary of State of the State of Indiana.

On the Effective Date the constituent and merging corporations shall become a single corporation, the separate existence of Wayne shall cease, and Grace shall continue to exist as the surviving corporation and shall thereupon and thereafter, to the extent consistent with its Certificate of Incorporation as in effect on the Effective Date, possess all the rights, privileges, immunities, and franchises of each of the constituent and merging corporations, and all property, assets, interests, rights and choses in action of or belonging to each of the constituent and merging corporations shall vest in Grace without further act or deed, and Grace shall thenceforth be responsible and liable for all the liabilities, obligations and penalties of each of the constituent and merging corporations, all in the manner and to the full extent provided by the General Corporation Act of the State of Indiana and the Stock Corporation Act of the State of Connecticut. Surplus of the constituent and merging corporations which was available for the payment of dividends or of other distributions to shareholders immediately prior to such merger shall continue to be so available to Grace for such payments to the same extent as before the merger, except as otherwise required by law.

At any time or from time to time on and after the Effective Date, the officers of Wayne shall, at the request and expense of Grace, execute and deliver or cause to be executed and delivered all such deeds, documents and instruments and take or cause to be taken all such other action as Grace may reasonably deem necessary or desirable in order more fully and effectively to vest in Grace, or to confirm Grace's title to and possession of, all of the rights, privileges, immunities, franchises, properties, assets and choses in action of Wayne, or to assist Grace in exercising rights with respect thereto, or otherwise to carry out the intents and purposes of this Agreement.

5. **Exchange of Certificates.** On and after the Effective Date, each holder of an outstanding certificate or certificates theretofore representing shares of Wayne Stock may surrender the same to Grace or an agent appointed by it, and such holder shall be entitled upon such surrender to receive in exchange therefor a certificate or certificates representing the number of full shares of Grace Common Stock into which the shares of Wayne Stock represented by the certificate or certificates so surrendered shall have been converted as provided in this Agreement.

No certificates or scrip representing fractional shares of Grace Common Stock shall be issued upon surrender for exchange of certificates representing shares of Wayne Stock as provided for hereinabove.

Wayne shall, however, make appropriate arrangements with its stockholders for the settling of fractional interests and shall advise Grace of such arrangements.

Each outstanding certificate which prior to the Effective Date represented shares of Wayne Stock shall be automatically and forthwith cancelled as of the Effective Date and shall have no further rights attached thereto except the right to receive a certificate representing shares of Grace Common Stock as above provided. Until a holder of shares of Wayne Stock shall have surrendered the certificates representing such shares, at the option of Grace dividends and other distributions with respect to the shares of Grace Common Stock into which such shares of Wayne Stock shall have been converted shall not be transmitted to such holder but shall be held for his account and no interest shall accrue thereon.

6. **Audit of Financial Statements of Wayne.** Wayne authorizes Grace, at Grace's expense, to cause Price Waterhouse & Co., independent accountants, to conduct an examination and audit of the books and accounts of Wayne and the Subsidiary as of the close of business on May 31, 1971 and to deliver to Grace not later than July 15, 1971 the Consolidated Balance Sheet of the Companies as at May 31, 1971 (the "1971 Balance Sheet") and related Consolidated Statement of Income and Retained Earnings of the Companies for the 5 months then ended. Wayne shall permit Price Waterhouse & Co. to conduct the aforesaid examination and audit, shall cooperate fully therein, and shall cause Carroll, Deal & Winkler, its independent accountants, to make available to Price Waterhouse & Co. all working papers, data and information prepared or obtained by said accountants in connection with their preparation of the December 31, 1970 financial statements.

The parties hereto acknowledge that the purpose of the foregoing is to permit the aforesaid May 31, 1971 financial statements to be certified by Price Waterhouse & Co., as presenting fairly the financial position of the Companies as at May 31, 1971 and the result of operations of the Companies for the 5 month period then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of prior periods and to review the working papers and report of Carroll, Deal & Winkler prepared in connection with their examination of the December 31, 1970 financial statements.

7. **Representations and Warranties by the Company.** Subject to the information set forth in a schedule (the "Disclosure Schedule") of even date delivered by the Company to Grace contemporaneously with the execution and delivery of this Agreement, the Company represents and warrants to Grace as follows:

(a) The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of Indiana. The Company is not licensed or qualified as a foreign corporation under the laws of any other State, and, in the opinion of the Company's officers, neither the character or location of the properties owned by the Company nor the nature of the business transacted by it makes license or qualification in any other State necessary. The Company has full power and lawful authority to carry on its business as now conducted and to own and operate its assets, properties and business. The copies of the Company's Articles of Incorporation and all amendments thereto to the date hereof (certified by the Secretary of State of Indiana) and of its by-laws as amended to the date hereof (certified by its Secretary) which have been delivered to Grace are true, complete and correct.

(b) The authorized capital stock of Wayne consists of 50,000 shares of common stock, no par value, of which 33,116 shares are validly issued, outstanding, fully paid and non-assessable, and 2,500 shares of preferred stock, $100 par value, none of which has been issued. The authorized capital stock of the Subsidiary consists of 3,000 shares of common stock, $100 par value, of which 1,100 shares are validly issued, outstanding, fully paid and non-assessable. There are no outstanding subscriptions, options, rights, warrants, calls, commitments, or agreements relating to the authorized shares (whether issued or unissued) of capital stock of either Wayne or the Subsidiary.

(c) The Company has heretofore delivered to Grace a true and complete list setting forth the names and addresses of all of the shareholders of record of the Company as of the date of this Agreement, together with the number of shares of common stock owned of record by each such shareholder.

(d) Wayne has no subsidiaries other than the Subsidiary, nor does it own any stock, bonds or other securities of, or have any proprietary interest in, or control, by means of a management contract or otherwise, the management or policies of, any other corporation, firm, association or business organization. The Company has delivered to Grace a schedule setting forth the name and jurisdiction of incorporation, if incorporated, of each corporation (other than the Company), firm, association or other business organization controlled, directly or indirectly, by the officers of the Company or any one or more of them or by members of the families of such officers or by any combination of the foregoing. "Control" for purposes of the immediately preceding sentence shall mean the power, by means of ownership of securities, contract or otherwise, to elect or designate the board of directors or other managing body of a corporation, firm, association or business organization or to direct in any manner the management policies of a corporation, firm, association or business organization.

(e) The Directors and Officers of the Company are the persons listed on the schedule heretofore delivered to Grace.

(f) The Company has heretofore delivered to Grace true and complete copies of the Balance Sheets of the Company as at December 31, 1970, 1969, 1968 and 1967 and related Statements of Profit and Loss for the respective fiscal periods then ended prepared on an accrual basis and certified by the Treasurer of the Company. Each of the aforesaid Balance Sheets and the 1971 Balance Sheet presents fairly, as of its date, the financial condition of the Company and the related Statements of Profit and Loss present fairly the results of the operations of the Company for the fiscal periods which they purport to cover, in conformity with generally accepted accounting principles applied on a basis consistent with that of prior periods.

(g) Except as and to the extent reflected or reserved against in the 1971 Balance Sheet, as of May 31, 1971 the Company had no debts, liabilities or obligations of any nature, whether accrued, absolute, contingent or otherwise, and whether due or to become due, including, but not limited to, liabilities or obligations on account of taxes or other governmental charges, or penalties, interest or fines thereon or in respect thereof. The Company does not know or have any reasonable grounds to know of any basis for any assertion against it as of May 31, 1971 of any debt, liability or obligation of any nature or in any amount not fully reflected or reserved against in the 1971 Balance Sheet.

(h) Since May 31, 1971 there has not been:

(i) Any change in the condition (financial or other), properties, assets, business or the prospects of the Company, except changes in the ordinary course of business which have not in any one case or in the aggregate been materially adverse;

(ii) Any damage, destruction or loss (whether or not covered by insurance) materially and adversely affecting the properties, assets, business or prospects of the Company;

(iii) Except for the declaration and payment of a dividend of forty-nine cents (49¢) per share, any declaration, setting aside or payment of any dividend or any other distribution on or in respect of the capital stock of the Company or any direct or indirect redemption, retirement, purchase or other acquisition by the Company of any of such stock or any issuance of any shares of such stock;

(iv) Any increase in the compensation or in the rate of compensation or commissions payable or to become payable by the Company to any director, officer, salaried employee earning $10,000 per annum or more, salesman, distributor or agent, or any general increase in the

compensation or in the rate of compensation payable or to become payable to the hourly employees, or to salaried employees of the Company earning less than $10,000 per annum ("general increase" for purposes hereof shall mean any increase generally applicable to a class or group of employees and shall not include increases granted to individual employees for merit, length of service, change in position or responsibility or other reasons applicable to specific employees and not generally to a class or group thereof), or any employee hired at a salary in excess of $10,000 per annum, or any payment of any bonus, profit sharing or other extraordinary compensation to any employee;

(v) Any change in the accounting methods or practices followed by the Company or any change in depreciation or amortization policies or rates theretofore adopted;

(vi) Any debt, obligation or liability (whether absolute or contingent) incurred by the Company (whether or not presently outstanding) except (A) current liabilities incurred, and obligations under agreements entered into, in the ordinary course of business and (B) obligations or liabilities entered into or incurred in connection with the execution of this Agreement;

(vii) Any sale, lease, abandonment or other disposition by the Company of any real property, or, other than in the ordinary course of business, of any machinery, equipment or other operating properties, or any sale, assignment, transfer, license or other disposition by the Company of any patent, trade-mark, trade name, brand name, copyright (or pending application for any patent, trade-mark or copyright), invention, process, know-how, formula, trade secret or other intangible asset; or

(viii) Any labor trouble, strike, or any other occurrence, event or condition of any similar character which adversely affects or may adversely affect the assets, properties, business or the prospects of the Company.

(i) The Company has duly and timely filed all tax returns required to be filed by it, and has paid all taxes shown to be due and payable on said returns, all assessments, notice of which has been received by it, and all other taxes, governmental charges, penalties, interest and fines due and payable by it on or before the date hereof. The Federal income tax returns of the Company have been audited by the Internal Revenue Service for all taxable years up to and including the calendar year 1968, and all taxes and assessments for such years have been finally determined and paid. There are no agreements, waivers or other arrangements providing for an extension of time with respect to the filing of any tax return or the payment or assessment of any tax, deficiency or governmental charge against the Company, and there are no suits, actions, claims, investigations, inquiries or proceedings now pending against the Company in respect of taxes, governmental charges or assessments, or any matters under discussion with any governmental authority relating to taxes, governmental charges or assessments, or any claims for additional taxes, governmental charges or assessments asserted by any such authority. The reserve made for taxes and governmental charges on the 1971 Balance Sheet is sufficient for the payment of all unpaid taxes and governmental charges payable by the Company attributable to all periods ended on or before May 31, 1971. The Company has withheld from each payment made to each of its employees the amount of all taxes (including, but not limited to, Federal income taxes and Federal Insurance Contribution Act taxes) required to be withheld therefrom and has paid the same to the proper tax receiving officers. The Company has never consented to have the provisions of Section 341(f) of the Internal Revenue Code of 1954 applied to it.

(j) The Company has delivered to Grace a true and complete schedule setting forth (i) a complete description by metes and bounds or lot, block and section of each parcel of real property owned by the Company together with a summary description of the buildings, structures and improvements thereon, (ii) a description of each and every lease of real property to which the Company is a party together with a summary description of the buildings, structures and improvements thereon, and (iii) a description of all other interests, if any, in real property owned or claimed by the Company.

All leases of real property under which the Company purports to be a lessee are valid, binding and in full force and effect, and there exists no default thereunder, and all of such leases are assignable to Grace with the Landlord's consent and are free and clear of all liens, encumbrances, mortgages, pledges, equities, charges, conditional sale and other title retention agreements, assessments, easements, covenants, restrictions, reservations, commitments, obligations, liabilities and other burdens of every nature except as set forth in such schedule.

All buildings, offices, shops and other structures and all machinery, equipment, tools, dies, fixtures, motor vehicles and other properties owned or used by the Company are in good operating condition and repair, ordinary wear and tear excepted, and are, in the opinion of the Company's officers, adequate and sufficient for all current operations of the Company. None of the properties owned or occupied by the Company, or the occupancy or operation thereof, is in violation of any law or any building, zoning or other ordinance, code or regulation, and no notice from any governmental body has been served upon the Company or upon any property owned or occupied by the Company claiming any violation of any such law, ordinance, code or regulation or requiring, or calling attention to the need for, any work, repairs, construction, alterations or installation on or in connection with said properties which has not been complied with.

The Company has good and marketable title to all real and personal property which it purports to own including, but not limited to, that reflected on the 1971 Balance Sheet (except as disposed of in the ordinary course of business since May 31, 1971), free and clear of all security interests, liens, encumbrances, mortgages, pledges, equities, charges, conditional sale and other title retention agreements, assessments, easements, covenants, restrictions, reservations, commitments, obligations, liabilities and other burdens of every nature.

(k) The Company has heretofore delivered to Grace a true and complete schedule setting forth all patents, trade-marks, trade names, brand names and copyrights, and all pending applications, if any, therefor, owned or used by or licensed to the Company, together with a summary description and full information in respect of the filing, registration or issuance thereof. No licenses, sub-licenses, covenants or agreements have been granted or entered into by the Company in respect of such patents, trade-marks, trade names, brand names, copyrights, applications, or licenses except those described on the schedule heretofore delivered to Grace pursuant to Section 7(l) hereof. In the opinion of the Company officers (i) no other patents, trade-marks, trade names, brand names, copyrights or applications are necessary for the conduct of the business of the Company as now conducted, (ii) the Company validly owns or is validly licensed under all inventions, processes, know-how, formulae and trade secrets which are necessary for the conduct of its business as now conducted, and all such rights and all rights listed on the schedule delivered to Grace pursuant to this Section 7(k) are valid and in good standing and free and clear of all liens and encumbrances of every nature, have not been challenged in any way or involved in any interference proceeding and are validly assignable to Grace, and (iii) the operations of the Company, the manufacture, use and sale by it of its products, the use by it of its machinery, equipment and processes, the use of its products by its customers for the purpose for which sold, and the use or publication by it of its patents, trade-marks, trade names, brand names and advertising, technical or other literature do not involve infringement or claimed infringement of any patent, trade-mark, trade name or copyright.

No director, officer or employee of the Company owns, directly or indirectly, in whole or in part, any patents, trade-marks, trade names, brand names or copyrights or applications therefor which the Company is presently using or the use of which is necessary for its business as now conducted.

(l) The Company has heretofore delivered to Grace a true and complete schedule of all of the following contracts, agreements, leases, licenses, plans, arrangements, commitments and other documents to which the Company is a party or by which it is in any way affected or bound:

(i) All contracts, agreements or commitments in respect of the sale of products or services, or for the purchase of raw materials, supplies or other products or utilities, other than contracts,

agreements or commitments involving payments or receipts by the Company of less than $10,000 in the case of any single contract, agreement or commitment and either terminable by the Company or to be fully performed within 6 months from the date hereof;

(ii) All sales agency or distributorship agreement or franchises;

(iii) All collective bargaining, union, employment or secrecy agreements or agreements providing for the services of an independent contractor;

(iv) All pension, profit sharing, retirement, bonus, stock option, group life, health and accident insurance and other employee benefit plans, agreements, arrangements or commitments, whether or not legally binding;

(v) All contracts, agreements, commitments or licenses relating to patents, trade-marks, trade names brand names, copyrights, inventions, processes, know-how, formulae of trade secrets;

(vi) All leases or other contracts, agreements or commitments relating to or affecting real property or any interest therein;

(vii) All loan agreements, indentures, mortgages, pledges, conditional sale or title retention agreements, equipment obligations or lease or lease purchase agreements;

(viii) All contracts, agreements and commitments, whether or not fully performed, in respect of the issuance of capital stock, bonds or other securities of the Company or pursuant to which the Company has acquired any substantial portion of its business or assets; and

(ix) All contracts, agreements or commitments other than those of the types covered by paragraphs (i) through (viii), inclusive, above (A) involving payments or receipts by the Company of more than $10,000 in the case of any single contract, agreement or commitment, or (B) not to be fully performed within 6 months from the date hereof or (C) otherwise materially affecting the condition (financial or other), properties, assets, business or prospects of the Company.

All of said contracts, agreements, leases, licenses and commitments (other than those which have been fully performed) are valid, binding and in full force and effect, and those to which the Company is a party are validly assignable to Grace without the consent of any other party except as stated in the aforesaid schedules. Copies of all the documents described in the aforesaid schedule have heretofore been delivered by the Company to Grace and are true and complete and include all amendments, supplements or modifications thereto.

(m) The Company has heretofore delivered to Grace a true and complete schedule listing the following described documents, and the copies thereof heretofore delivered by the Company to Grace are true and complete and include all amendments and supplements thereto and modifications thereof:

(i) Each contract, agreement, arrangement or commitment, whether or not fully performed, in respect of the issuance or acquisition of capital stock, bonds or other securities of the Company or pursuant to which the Company has acquired any substantial portion of its business or assets.

(ii) Each questionnaire, inquiry, demand or request for information received by the Company from (and each response of the Company thereto), and each registration statement, report or other document filed by the Company with, any federal governmental body or administrative agency (including, but not limited to, the Securities and Exchange Commission, Federal Trade Commission, Department of Justice, Department of Labor, National Labor Relations Board or Interstate Commerce Commission) and routine questionnaires and requests for information received by members of the industry generally.

(iii) The federal income tax returns of the Company for the five years ended December 31, 1970.

(iv) Each audit report or other formal report submitted to the Company after December 31, 1966, by independent accountants in connection with any annual or interim audit of the books of such Company.

(v) Each market survey, management study or other special report of study concerning the business of the Company submitted to the Company by any independent business, marketing or other consultant.

(vi) Each statement (including, but not limited to, completed questionnaires) concerning conflicts of interest received by the Company from any of its directors, officers or employees.

(n) The Company is not in default, nor alleged to be in default, under any contract, agreement, lease, license, commitment, instrument or obligation, and, in so far as the Company's officers are aware, no other party to any contract, agreement, lease, commitment or instrument to which the Company is a party is in default thereunder, and there exists no condition or event which, after notice or lapse of time or both, would constitute a default by any party to any such contract, agreement, lease, commitment, instrument or obligation.

(o) The Company has heretofore delivered to Grace a true and complete schedule setting forth (i) the name of each bank in which the Company has an account or safe deposit box and the names of all persons authorized to draw thereon or to have access thereto, and (ii) the names of all persons, firms, associations, corporations, or business organizations holding general or special powers of attorney from the Company and a summary of the terms thereof.

(p) There are no suits, actions, claims, investigations by any governmental body, or legal, administrative or arbitration proceedings pending or threatened against or affecting the Company or any of its properties, assets, business or prospects or to which the Company is or might become a party, and neither the Company nor any of its directors or officers knows of any basis or grounds for any suit, action, claim, investigation or proceeding. There is no outstanding order, writ, injunction or decree of any court, governmental agency or arbitration tribunal against or affecting the Company or any of its respective properties, assets, business or prospects.

(q) The Company has all governmental licenses and permits (federal, state and local) necessary to conduct its business, and such licenses and permits are in full force and effect. No violations are or have been recorded in respect of any of such licenses or permits, and no proceeding is pending or threatened looking toward the revocation or limitation of any of such licenses or permits. The Company has complied with all laws, rules, regulations and orders applicable to its business, including, but not limited to the labor and anti-trust laws and all laws relating to wages, salaries, employee benefits or conditions of employment.

(r) The Company has heretofore delivered to Grace a true and complete schedule setting forth all insurance policies (specifying the insurer, the amount of the coverage the type of insurance, the policy number and any pending claims thereunder) maintained by the Company on its properties, assets, business and personnel. The Company is not in default with respect to any provisions contained in any insurance policy, nor has it failed to give any notice or present any claim under any insurance policy in due and timely fashion.

(s) All notes and accounts receivable of the Company shown on the 1971 Balance Sheet and all notes and accounts receivable acquired by it subsequent to May 31, 1971 have arisen in the ordinary course of business and have been collected or are collectible in the aggregate recorded amounts thereof, less (i) with respect to notes and accounts receivable reflected on the 1971 Balance Sheet, the applicable reserve in respect thereof reflected on such 1971 Balance Sheet, and (ii) with respect to notes and accounts receivable acquired subsequent to May 31, 1971, the applicable reserves set up on the books of the Company in respect thereof, which reserves are in an amount not in excess of the same proportion of the notes and accounts receivable acquired by the Company subsequent to May 31, 1971 as the proportion which the applicable reserves reflected on its 1971 Balance Sheet is

of the aggregate recorded amounts of the notes and accounts receivable reflected on the 1971 Balance Sheet.

(t) The inventories of the Company shown on the 1971 Balance Sheet and the inventories acquired by it subsequent to May 31, 1971 consist of items of a quality and quantity usable and salable in the normal course of its business, and the values of obsolete materials and materials below standard quality have been written down on its books of account to realizable market value, or adequate reserves have been provided therefor, and the values at which such inventories are carried reflect the customary inventory valuation policy consistently applied by the Company of stating inventory at the lower of cost or estimated realizable market value, on a basis equivalent to first-in-first-out, all in accordance with generally accepted accounting principles.

(u) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not (i) result in the breach of any of the terms or conditions of, or constitute a default under, the Articles of Incorporation or by-laws of the Company, or of any mortgage, note, bond, indenture, agreement, license or other instrument or obligation to which the Company is now a party or by which it or any of its properties or assets may be bound or affected, or (ii) violate any order, writ, injunction or decree of any court, administrative agency or governmental body.

(v) This Agreement, the execution and delivery of this Agreement by Wayne, and the consummation of the transactions contemplated by this Agreement have been duly and validly adopted and authorized by the shareholders and by the Board of Directors of Wayne, and, to the extent that this Agreement constitutes a contract between Wayne and Grace in addition to, or supplementary to, a plan of merger, this Agreement has been duly and validly authorized by all necessary corporate action and is legally binding upon Wayne in accordance with its terms.

(w) The Company has heretofore delivered to Grace a true and complete schedule setting forth the name and annual salary and other compensation as of May 31, 1971 of each director and each officer of the Company and of each employee and each salesman thereof whose current annual salary and/or estimated current annual commission is $10,000 or more.

(x) Except as disclosed to Grace in writing, no officer and, to the knowledge of the Company or any of its directors or officers, no employee of the Company owns, directly or indirectly, a controlling interest in or is an employee of any corporation, firm, association or business organization which is a competitor or a potential competitor of the Company.

(y) No representation or warranty by the Company in this Agreement or in any statement (including financial statements), deed, certificate, schedule, or other document furnished to Grace pursuant hereto or in connection with the transactions contemplated hereby contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements herein or therein not misleading.

8. **Representations and Warranties by Grace.** Grace represents and warrants as follows:

(a) Grace is a corporation duly organized, validly existing and in good standing under the laws of the State of Connecticut.

(b) As of the close of business March 23, 1971, the outstanding capital stock of Grace consisted of 27,351 shares of Preferred Stock, par value $100 per share, 47,494 shares of Class A Preferred Stock, par value $100 per share, 36,682 shares of Class B Preferred Stock, par value $100 per share, and 23,060,854 shares of Common Stock, par value $1 per share.

(c) Grace has delivered to the Company copies of the following financial statements:

(i) Consolidated Balance Sheet of Grace and subsidiary companies as at December 31, 1970 and Consolidated Statement of Income and Retained Earnings for the year then ended, certified by Price Waterhouse & Co.

(ii) First Quarter Report of Grace and subsidiary companies dated April 21, 1971 containing an unaudited summary of the results of operations for the three month period ended March 31, 1971.

Subject to the effect, if any, of the determination of the ultimate realizable value of Grace's investments in and advances to its unconsolidated Peruvian subsidiary companies as described in Note 1 of the Notes to Financial Statements which constitute part of the financial statements referred to above in this Section 8(c), the Consolidated Balance Sheet and Consolidated Statement of Income and Retained Earnings referred to above present fairly the financial position of Grace and its subsidiary companies at December 31, 1970 and the results of their operations for the year then ended in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

(d) The shares of Grace common stock to be delivered pursuant hereto will, when issued and delivered as herein provided, be duly and validly issued, fully paid and non-assessable and duly authorized for listing on the New York Stock Exchange and the Midwest Stock Exchange upon official notice of issuance.

(e) The execution and delivery of this Agreement by Grace and the performance of the transactions contemplated hereby have been duly and validly authorized by the Board of Directors of Grace and this Agreement is binding upon and enforceable against Grace in accordance with its terms.

9. Efforts of Grace and Wayne. Grace and Wayne agree to proceed promptly and expeditiously, and to use their best efforts to enter into, execute, acknowledge, adopt, certify, file, and deliver all documents and to take all action and to do all things necessary, advisable or proper under the laws of the State of Connecticut and the State of Indiana, or either of such states, to consummate and make effective the merger herein provided for and to carry out the purposes of this Agreement.

10. Conditions Precedent to Obligations of Grace. All obligations of Grace under this Agreement are subject, at Grace's option, to the fulfillment, prior to or on the Effective Date, of each of the following conditions.

(a) Each and every representation and warranty of the Companies contained in this Agreement and all schedules hereto and in all statements (including, but not limited to, financial statements), certificates, deeds, and other documents furnished to Grace pursuant hereto or in connection with the transactions contemplated hereby shall be true and accurate in all material respects as of the date when made and shall be deemed to be made again on the Effective Date and shall, except for changes contemplated or permitted by this Agreement, then be true and accurate in all material respects.

(b) The Companies shall have performed and complied with each and every covenant, agreement and condition required by this Agreement to be performed or complied with by it prior to or on the Effective Date.

(c) Wayne shall have delivered to Grace a certificate of the President and the Treasurer of Wayne, dated the Effective Date, certifying to the fulfillment of the conditions set forth in subsections (a) and (b) of this § 10.

(d) Wayne shall have delivered to Grace an opinion of Messrs. Congdon & Kaag, counsel for Wayne, dated the Effective Date, in form and substance satisfactory to Grace, to the effect that:

(i) The corporate existence and good standing in their respective states of incorporation, the qualification and good standing in other jurisdictions, and the corporate power and authority of the Companies are as represented and warranted in subsection (a) of § 7 of this Agreement.

(ii) The authorized, issued and outstanding capital stock of the Companies is as represented and warranted in subsections (b) and (d) of § 7 of this Agreement.

(iii) All legal and corporate proceedings necessary to be taken by Wayne and its shareholders in connection with the adoption of this Agreement and the authorization and approval of the transactions contemplated by this Agreement and necessary to make the same effective have been duly and validly taken, and this Agreement has been duly and validly adopted, authorized, executed and delivered by Wayne and constitutes a valid and binding legal obligation of Wayne.

(iv) Upon the completion of all acts required to be performed by or on behalf of Wayne and Grace pursuant to the provisions of this Agreement, a valid and effective merger of Wayne into Grace shall have been effected, insofar as the provisions of Indiana law are concerned.

(v) Except as specified in such opinion such counsel does not know or have any reason to believe that the Company is a party to or affected by any pending suit, action or claim, or investigation or inquiry by any administrative agency or governmental body, or legal, administrative or arbitration proceeding or that any such suit, action or claim, or investigation or inquiry or proceeding is threatened to which the Company might become a party or which might affect its properties, assets, businesses or prospects.

(vi) Such counsel does not know or have any reason to believe that any representation or warranty of Wayne contained in this Agreement or any schedule hereto or in any statement, certificate, deed or other document furnished to Grace pursuant hereto or in connection with the transactions contemplated hereby is false or inaccurate in any respect or contains any untrue statement of fact or omits to state any fact necessary to make the statements herein or therein not misleading.

(vii) Such counsel does not know or have any reason to believe that Wayne has not performed and complied with each and every covenant, agreement and condition required by this Agreement to be performed or complied with by it prior to or on the Effective Date.

(e) Grace shall have received from Price Waterhouse & Co. written confirmation that treatment of the transactions contemplated hereby as a pooling of interests would be in accordance with generally accepted accounting principles.

(f) All actions, corporate proceedings, instruments and documents required to carry out this Agreement, or incidental thereto, and all other related legal matters, shall have been approved by the General Counsel of Grace.

(g) Each of the persons listed on the schedule (dated the date hereof, identified specifically as a schedule to this subsection and signed by an officer of Grace) heretofore delivered to by Wayne shall have executed and delivered to Grace an employment agreement in the form attached to such schedule.

(h) No suit, action, investigation, inquiry or proceeding by any governmental body or other person or legal or administrative proceeding shall have been instituted or threatened which questions the validity of the transactions contemplated hereby.

(i) Grace shall have received legal opinions, title insurance (or commitments therefor) or other evidence establishing that as of the Effective Date the titles of the Company to the real and personal property referred to in subsection (j) of §7 of this Agreement are as represented in such subsection.

(j) Grace shall have received from its General Counsel an opinion that the issue and delivery of Grace Common Stock pursuant to this Agreement is, under the circumstances contemplated by this Agreement, exempt from registration under the Securities Act of 1933, as amended.

(k) The Grace Common Stock to be issued pursuant to this Agreement shall have been duly authorized for listing on the New York Stock Exchange and the Midwest Stock Exchange upon official notice of issuance and all Blue Sky filings and permits required to carry out the transactions contemplated hereby shall have been made and received.

(l) Wayne shall have delivered to Grace an affidavit setting forth the tax basis to Wayne of the stock of the Subsidiary.

(m) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby shall have been duly approved by the Board of Directors of Grace.

(n) Grace shall have received from Price Waterhouse & Co. (i) a report in form and substance satisfactory to Grace that, based on a review of the working papers and reports of Carroll Deal & Winkler prepared in connection with their examination of the December 31, 1970 financial statements of the Company and the Subsidiary, nothing came to the attention of Price Waterhouse & Co. which would indicate that such a report did not present fairly the financial position of the Company and the Subsidiary as of December 31, 1970 or the results of their operations for the year then ended and, (ii) the Price Waterhouse & Co. report referred to in Section 6 hereof.

11. **Conditions Precedent to Grace's Obligations to Issue Additional Shares.** Grace's obligation to issue and deliver Additional Shares as provided in Section 3 is subject to the condition that such additional shares shall have been duly authorized for listing upon official notice of issuance on all securities exchanges on which shares of Grace Stock are listed. Grace agrees to use its best efforts to effect such listing.

12. **Agreements as to Securities Act and Representations by Wayne Stockholders.** Wayne shall obtain from each of its stockholders and deliver to Grace a written instrument, in form and substance satisfactory to Grace and its counsel, to the effect that such person covenants and agrees that he will not at any time or times, directly or indirectly, make any offers, sales, pledges, transfers or other dispositions (other than offers and sales made pursuant to the terms of the Registration Statement hereinafter referred to and in accordance with the Securities Act of 1933, as amended (the "Act"), and the rules and regulations of the Securities and Exchange Commission ("SEC")) of the Grace Common Stock which he is to receive on or in connection with the merger or any portion of said Grace Common Stock (or solicit any offers to buy, purchase or otherwise acquire or to take a pledge of any of said Grace Common Stock), if under the Act and the rules and regulations (including Rule 133) of the SEC such person would be deemed to be an underwriter or to be engaged in a distribution with respect to any of the Grace Common Stock or Grace would for any reason be required to register any of the Grace Common Stock under the Act.

The certificates representing the Shares may, at Grace's option, bear the following legend:

"The shares represented by this certificate have not been registered under the Securities Act of 1933, as amended. Such shares may not be offered or sold, and no transfer will be made, without the written consent of W. R. Grace & Co. unless there shall be available a prospectus covering such shares meeting the requirements of said Act or there shall have been delivered to W. R. Grace & Co. or its Transfer Agent (i) an opinion of the General Counsel of W. R. Grace & Co. to the effect that such a prospectus is not required in connection with the proposed offer, sale or transfer, or (ii) a letter from the Division of Corporation Finance of the Securities and Exchange Commission to the effect that such Division would not recommend any action to such Commission if such offer, sale or transfer were effected without such a prospectus being available."

On or after the earliest of (i) the effective date of a Registration Statement covering Shares represented by a particular certificate, or (ii) the date of the occurrence of the event referred to in clause (i) or (ii) of the aforesaid legend with respect to Shares represented by a particular certificate, Grace will, upon surrender for exchange of such certificate, caused to be issued to the record holder thereof a new certificate representing the number of Shares represented by such certificate which new certificate will not bear the aforesaid legend.

In order to enable Grace and Price Waterhouse & Co. to determine that treatment of the transaction contemplated hereby as a pooling of interests will be in accordance with generally accepted accounting principles, Wayne shall obtain from such of its stockholders as Grace may specify, a written instrument,

in form and substance satisfactory to Grace and Price Waterhouse & Co., to the effect that such stockholder will not, within two years from the Effective Date, dispose of any substantial portion (i.e., more than 25% in each year) of the Grace Common Stock (including the Additional Shares, if any), which he is to receive hereunder and that he has no present intention of selling or otherwise disposing of the remaining shares.

13. **Termination and Abandonment; Expenses.** The obligations of Wayne and Grace under this Agreement may be terminated and the merger contemplated by this Agreement abandoned at any time prior to the Effective Date either

(a) by mutual consent of the Board of Directors of Wayne and Grace; or

(b) at the election of the Board of Directors of Grace if any condition to the obligations of Grace set forth in § 10 of this Agreement has not been fulfilled prior to or on the Effective Date.

Wayne shall pay all expenses incurred by or on behalf of Wayne in connection with the preparation, adoption, authorization, execution and performance of this Agreement, including but not limited to, all fees and expenses of agents, representatives, counsel and accountants, and Grace shall pay all such expenses incurred by or on behalf of Grace.

14. **Nature of Statements.** Each statement of fact contained in any schedule to this Agreement or in any statement, certificate, deed or other document furnished by or on behalf of Wayne or Grace pursuant to this Agreement or in connection with the transactions contemplated hereby shall be deemed a representation and warranty hereunder.

15. **Notices.** All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, given by prepaid telegram or mailed first-class, postage prepaid, registered or certified mail, as follows:

If to Grace—

W. R. Grace & Co.
3 Hanover Square
New York, N. Y. 10004
Attention: Leo A. Larkin, Secretary

If to Wayne—

Wayne Candles, Inc.
1501 East Berry Street
Fort Wayne, Indiana 46801

Attention: Paul Dickmeyer

With a copy to
Paul E. Congdon, Esq.
116 E. Wayne Street
Fort Wayne, Indiana 46802

Either Grace or Wayne may change the address at which such communications are to be directed to it by giving notice to the other in the manner provided in this § 15.

16. **Governing Law.** To the extent that this Agreement constitutes a plan of merger, it shall be governed by and construed and enforced in accordance with the laws of the States of Connecticut and Indiana as applicable. To the extent that this Agreement constitutes a contract between Wayne and Grace in addition to, or supplementary to, a plan of merger, it shall be governed by and construed and enforced in accordance with the laws of the State of New York.

17. **Brokers.** Each party to this Agreement agrees, with respect to any claim for any brokerage or finder's fee or other commission relating to this Agreement or to the transactions contemplated hereby based in any way on any agreement, arrangement or understanding entered into by it, to indemnify and hold harmless the other party hereto.

18. **General.** This Agreement sets forth the entire agreement and understanding of the parties in respect of the transactions contemplated hereby and supersedes all prior agreements, arrangements and understandings relating to the subject matter hereof. No representation, promise, inducement or statement of intention has been made by Wayne or Grace which is not embodied in this Agreement or the written statements, certificates, schedules or other documents delivered pursuant hereto or in connection with the transactions contemplated hereby, and neither Wayne nor Grace shall be bound by or liable for any alleged representation, promise, inducement or statement of intention not so set forth. All the terms, covenants, representations, warranties and conditions of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the parties hereto and their respective successors, but this Agreement and the rights and obligations hereunder shall not be assignable. The failure of either party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by either party of any condition or of any breach of any term, covenant, agreement, representation or warranty under this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, agreement, representation or warranty under this Agreement. The titles of sections in this Agreement are inserted for convenient reference only, and shall not be deemed to constitute a part of this Agreement or to affect in any way its meaning or interpretation. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement and caused their respective corporate seals to be hereunto affixed and attested by their duly authorized officers as of the date first above written.

W. R. GRACE & Co.

[SEAL]

By s/THOMAS E. HANIGAN, JR.
Vice President

ATTEST:

s/LEO A. LARKIN
Secretary

WAYNE CANDIES, INC.

[SEAL]

By s/JOHN H. BLEKE
President

ATTEST:

s/RICHARD S. DICKMEYER
Secretary