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CERTIFICATE OF MERGER

of

PARENTS' MAGAZINE ENTERPRISES, INC.  
(a New York corporation)

into

W. R. GRACE & CO.  
(a Connecticut corporation)  
as the Surviving Corporation

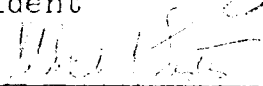
1. The name of the surviving corporation in the merger is W. R. GRACE & CO., a Connecticut corporation.
2. The Plan of Merger is as set forth in an Agreement and Plan of Merger of Parents' Magazine Enterprises, Inc. ("PME") into W. R. Grace & Co. ("Grace") dated September 15, 1969, a true and complete 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 Parents' Magazine Enterprises, Inc. and as to that corporation:
    - (i) The shareholder vote required to adopt the Plan of Merger was two-thirds (2/3) of the outstanding shares entitled to vote thereon.
    - (ii) The number of shares outstanding and entitled to vote thereon was 414.5 shares of Management Stock and 161,500 shares of common stock.
    - (iii) The voting power of the corporation on the Plan of Merger was vested in the holders of 414.5 shares of Management Stock, who had 414.5 votes, and in the holders of 161,500 shares of common stock, who had 161,500 votes.
    - (iv) The vote in favor of the Plan of Merger was 414.5 affirmative votes of the holders of Management Stock and 161,500 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 December 4, 1969.

Dated this 7th day of May, 1970.


W. R. GRACE & CO.

By T. E. HANIGAN, JR.   
Executive Vice President

By ALBERT A. EUSTIS   
Assistant Secretary

PARENTS' MAGAZINE ENTERPRISES, INC.

By G. T. Zignone   
Executive Vice President

By Fred Edinger   
Assistant Secretary

STATE OF NEW YORK }  
COUNTY OF NEW YORK } SS:

Personally appeared Thomas E. Hanigan, Jr. and Albert A. Eustis and made oath to the truth of the above certificate insofar as it pertains to W. R. GRACE & CO., before me.

May 7, 1970

*Mary J. Pettus*  
Notary Public

MARY J. PETTUS  
NOTARY PUBLIC, State of New York  
No. 41-3081423 Qual. in Queens Co.  
Certificate filed in New York County  
Commission Expires March 30, 1971

STATE OF NEW YORK }  
COUNTY OF NEW YORK } SS:

Personally appeared G. T. ZIGNONE and FRED EDINGER and made oath to the truth of the above certificate insofar as it pertains to PARENTS' MAGAZINE ENTERPRISES, INC., before me.

May 7, 1970.

*Mary J. Pettus*  
Notary Public

MARY J. PETTUS  
NOTARY PUBLIC, State of New York  
No. 41-3081423 Qual. in Queens Co.  
Certificate filed in New York County  
Commission Expires March 30, 1971

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Ellen T. ... Secretary of State by *K. Keegan*  
#20.

*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 13th day  
of May A.D., 1970.

Ella T. Grasse  
Secretary of the State

**AGREEMENT AND PLAN OF MERGER**  
**of**  
**PARENTS' MAGAZINE ENTERPRISES, INC.**

**into**

**W. R. GRACE & CO.**

**AGREEMENT AND PLAN OF MERGER** dated September 15, 1969 made and entered into by and between Parents' Magazine Enterprises, Inc. (herein called "PME"), a New York corporation originally formed under the name "The Parents' Publishing Association, Inc." having its executive office at 52 Vanderbilt Avenue, New York, New York, and W. R. GRACE & Co. (herein called "Grace"), a Connecticut corporation having its executive office at 7 Hanover Square, New York, New York.

WHEREAS PME is authorized to issue (a) 250,000 shares of common stock, 20¢ par value (herein called "PME Common Stock"), of which 161,500 shares are issued and outstanding and 1,000 additional shares, previously issued and outstanding, have been reacquired and are held in the treasury of PME, and (b) 750 shares of management stock, without par value (herein called "PME Management Stock"), of which 414.5 shares are issued and outstanding and 106.5 additional shares, previously issued and outstanding, have been reacquired and are held in the treasury of PME;

WHEREAS the holders of shares of PME Management Stock are entitled to vote on all matters, including the adoption of this Agreement and the holders of PME Common Stock are entitled to vote as a class upon the adoption of this Agreement.

WHEREAS Grace is authorized to issue (a) 30,000,000 shares of common stock, \$1 par value (herein called "Grace Common Stock"), of which 20,056,120 shares are issued and outstanding, (b) 40,000 shares of Preferred Stock, \$100 par value, of which 27,601 shares are issued and outstanding and 12,399 additional shares, previously issued and outstanding, have been reacquired and are held in the treasury of Grace, (c) 50,000 shares of Class A Preferred Stock, \$100 par value, of which 48,132 shares are issued and outstanding and 1,868 additional shares, previously issued and outstanding, have been reacquired and are held in the treasury of Grace, (d) 40,000 shares of Class B Preferred Stock, \$100 par value, of which 37,951 shares are issued and outstanding and 2,049 additional shares, previously issued and outstanding, have been reacquired and are held in the treasury of Grace, and (e) 5,000,000 shares of Class C Preferred Stock, no par value, of which no shares are outstanding and no shares have been issued;

WHEREAS none of the shareholders of Grace is entitled to vote on the adoption of this Agreement or the merger contemplated hereby; and

WHEREAS (a) the number of outstanding shares of Grace Common Stock may increase prior to the effective date of the merger contemplated by this Agreement through the issuance of additional shares of Grace Common Stock upon exercise of options granted by Grace, upon granting of stock awards, or upon conversion of certain indebtedness of Grace or its subsidiaries, or in connection with acquisitions heretofore or hereafter made by Grace of the stock or assets of one or more other corporations or enterprises, or mergers hereafter consummated by Grace with one or more other corporations, (b) shares of Class C Preferred Stock, no par value, of Grace may be issued prior to the effective date of such merger in connection with acquisitions hereafter made by Grace of the stock or assets of one or more other corporations or enterprises, or mergers hereafter consummated with one or more other corporations, and (c) the number of outstanding shares of Grace Common Stock and of any class of Preferred Stock of Grace may increase or decrease prior to the effective date of such merger through purchases and/or sales by Grace of such stock,

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, issued at the 1973 Closing pursuant to the provisions of § 6 hereof.

(b) "1973 Closing" means the Closing referred to in § 6 hereof.

(c) "Company" means PME or a Subsidiary, "Companies" means PME and all of the Subsidiaries, "each Company" and "each of the Companies" mean PME and each Subsidiary, "any Company" and "any of the Companies" mean either PME or any Subsidiary, and "no Company" and "none of the Companies" mean neither PME nor any Subsidiary.

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

(e) "January 31 Balance Sheet" means the Balance Sheet referred to in subsection (g) of § 7 of this Agreement.

(f) "PME Stock" means the shares of PME Common Stock and PME Management Stock as hereinabove defined.

(g) "Principal Company" means PME or one of the following Subsidiaries: The Baker & Taylor Co. of Texas, Inc., The Book Buyers Guide, Inc., Library Service Company, Inc. and F. A. O. Schwarz. "Principal Companies" means PME and all of such Subsidiaries, "each Principal Company" and "each of the Principal Companies" mean PME and each such Subsidiary, "any Principal Company" and "any of the Principal Companies" mean either PME or any such Subsidiary, and "no Principal Company" and "none of the Principal Companies" mean neither PME nor any such Subsidiary.

(h) "Subsidiary" means Subsidiary as defined in subsection (a) of § 7 of this Agreement.

2. **Merger; Conversion of Stock.** PME and Grace are the constituent corporations as contemplated by the Business Corporation Law of the State of New York, and the merging corporations as contemplated by the Stock Corporation Act of the State of Connecticut. On the Effective Date and pursuant to the Business Corporation Law of the State of New York and the Stock Corporation Act of the State of Connecticut:

(a) PME 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 one (1) share of PME Common Stock and each one (1) share of PME Management Stock (except shares owned by or held in the treasury of any of the Companies) which are 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 (A) 5.5585 fully-paid and non-assessable shares of Grace Common Stock if the Effective Date shall occur on or prior to the record date for the determination of holders of Grace Common Stock who are entitled to receive the cash dividend payable on such Stock in March, 1970, or (B) 5.5770 such shares if the conditions contained in § 13(h), § 13(l), or § 14(d) shall not have been fulfilled on or prior to such record date and the Effective Date shall occur thereafter, and each share of PME Common Stock and each share of PME Management Stock which on the Effective Date is owned by or held in the treasury of any of the Companies shall be cancelled and cease to exist and no shares of stock of Grace shall be issued therefor under this Agreement.

3. If the PME 1969 Earnings (as hereinafter defined) shall be less than \$2,100,000, the number of shares of Grace common stock to be issued pursuant to § 2(h)(ii) hereof in exchange for the shares of PME Stock shall be adjusted as follows: (a) If the Effective Date shall occur prior to the time the PME 1969 Earnings are determined as hereinafter provided, Grace shall withhold 100,000 shares of Grace common stock (the "Withheld Shares") from the shares to be issued in exchange for the PME Stock, said Withheld Shares to be held and disposed of as hereinafter provided; or (b) if the Effective Date shall occur subsequent to the time that PME 1969 Earnings are determined, the total number of shares of Grace common stock to be issued on the Effective Date pursuant to § 2(h)(ii) hereof shall be reduced by one share for each \$2.50 by which the PME 1969 Earnings shall be less than \$2,100,000 and the conversion ratio set forth in § 2(h)(ii) hereof shall be adjusted accordingly.

The Withheld Shares (together with all dividends paid thereon) shall be retained by Grace (or its nominee) until such time as the PME 1969 Earnings have been determined as hereinafter provided. When the PME 1969 Earnings have been determined, Grace shall, if said PME 1969 Earnings are less than \$2,100,000, retain one share of Grace Common Stock for each \$2.50 by which said PME 1969 Earnings are less than \$2,100,000 and shall distribute the balance of the Withheld Shares, if any, together with all dividends paid thereon, to the company's shareholders in the same proportion as shares were issued to them pursuant to § 2(h)(ii) hereof. Grace shall cause the independent accountants then acting as auditors for Grace to conduct an examination of PME's financial statements for the year ended January 31, 1970 in accordance with generally accepted auditing standards and to deliver to Grace, within 60 days after January 31, 1970, or as soon as practicable thereafter, and Grace shall deliver to the New Corporation (as hereinafter defined) a statement setting forth the PME 1969 Earnings. Said statement shall be prepared in such reasonable detail as shall be sufficient to demonstrate that the PME 1969 Earnings were determined in accordance with generally accepted accounting principles as modified by the provisions of this Agreement. The PME 1969 Earnings as set forth in the statement delivered by Grace to the New Corporation shall, in the absence of notice of objection by the New Corporation or Grace as hereinafter described be binding and conclusive upon the parties to this Agreement. The parties hereto agree that the \$2.50 figure referred to in this § 3 is intended to be used solely for purposes of computing

the number of Withheld Shares to be retained by Grace and is not intended to affect the standards of materiality to be applied by the independent accountants who shall conduct the aforesaid examination of PME's financial statements, which standards shall be those customarily applied in conducting acquisition examinations.

If Grace or the New Corporation has any objection to the statement delivered pursuant to the preceding paragraph, the party having such objection shall give written notice of such objection to the other party and to the independent accountants of Grace who shall have examined the statement within 20 days after such statement has been delivered by Grace to the New Corporation. If any such notice is given, Grace and the New Corporation shall, for a period of 20 days after the giving of such notice, endeavor to agree upon a settlement of the matter, which settlement shall be conclusive as to the PME 1969 Earnings. If Grace and the New Corporation fail so to agree, the matter shall be submitted to an arbitrator for settlement, such arbitrator to be a firm of recognized independent accountants approved by Grace and the New Corporation. If Grace and the New Corporation are unable to agree upon a firm of independent accountants, a firm of independent accountants shall be appointed by an arbitrator selected in accordance with the Rules of the American Arbitration Association. The determination made by the firm of independent accountants approved by Grace and the New Corporation or appointed by the arbitrator as to any matter in dispute shall, for the purposes specified above, be conclusive and binding upon all parties hereto with respect to the PME 1969 Earnings. All fees and expenses in connection with the preparation of the statements by the independent accountants of Grace shall be borne by Grace. All fees and expenses of the firm of independent accountants approved by Grace and the New Corporation or appointed by the arbitrator, as well as the fees and expenses of the arbitrator, shall be borne equally by Grace and the New Corporation.

PME 1969 Earnings, for the purposes hereof, shall mean the sum of the after-tax net income (less losses) on a separate return basis for the fiscal year ended January 31, 1970 derived from the PME Business (as hereinafter defined), such net income to be computed as follows: (a) Such net income shall be determined in a manner consistent with the accounting practices used to prepare the financial statements referred to §7(g)(ii) hereof, to the extent that such accounting practices are in accordance with generally accepted accounting principles; (b) without regard to gains or losses (and the tax consequences thereof) on the sale or other disposition of capital assets, real property, and other property in respect of which gains or losses are treated as capital gains or losses for income tax purposes or items which would be treated as "extraordinary items" or "prior period adjustments" in accordance with generally accepted accounting principles; (c) no charge shall be made for advisory services rendered by Grace and no allocation of Grace's general administrative overhead shall be made against such net income; provided however that to the extent that Grace shall render any services, including, but not limited to, legal, financial, or administrative services which are necessary properly to carry on PME's Business and which, if obtained from outside sources, would have resulted in a charge or expense, there shall be deducted from such net income an amount equal to the charge which Grace makes for rendering such service to its other divisions or subsidiaries in those cases in which it makes such charges; and (d) expenses for the items set forth on the schedule (identified as the schedule referred to in this § 3 and signed by an officer of PME and an officer of Grace) shall be treated as set forth in said schedule.

PME's Business, for the purposes hereof, shall mean the business conducted by PME (and by Grace if the Effective Date shall occur prior to January 31, 1970) through PME's Baker and Taylor Division and by its subsidiaries, The Baker & Taylor Co. of Texas, Inc., The Book Buyers Guide Inc. Library Service Company, Inc., and F.A.O. Schwarz. PME's Business shall not include the business conducted using the assets transferred to the New Corporation, whether prior or subsequent to the transfer of such assets to the New Corporation.

In the event that PME shall, not less than 30 days prior to the Effective Date, have delivered to Grace a written notice, signed by the Chairman of the Board and by the Treasurer of PME, certifying that, upon information and belief, said Chairman and Treasurer had determined that the PME 1969 Earnings will be less than \$2,100,000 which written notice shall set forth in detail the information upon which such belief is based and said Chairman's and Treasurer's best estimate of what PME's 1969 Earnings are expected to be, Grace shall either, at its option:



(a) Waive the adjustments referred to in the first paragraph of § 3 hereof, whereupon the transactions hereby contemplated shall be effected in all respects as if PME's 1969 Earnings had been \$2,100,000 or more and the adjustments referred to in the first paragraph of § 3 hereof shall not be made; or

(b) Request that the Effective Date be deferred until PME's 1969 Earnings have been determined by the independent accountants as provided in the second paragraph of § 3 hereof (subject to the provisions of the third paragraph of § 3 hereof).

If PME's 1969 Earnings as determined by the independent accountants and binding upon the parties shall be \$2,100,000 or more or if Grace shall, by written notice to PME delivered not later than 10 business days following the day upon which said Earnings shall have been so determined, waive the adjustments referred to in the first paragraph of § 3 hereof, the transactions contemplated hereby shall be consummated in accordance with the terms of this Agreement in all respects as if said PME 1969 Earnings had been \$2,100,000 or more and the adjustments referred to in the first paragraph of § 3 hereof shall not be made.

If PME's 1969 Earnings as so determined shall be less than \$2,100,000 and Grace shall not have waived the adjustments referred to in the first paragraph of § 3 hereof, PME shall at its option, exercisable upon written notice delivered to Grace, not earlier than 10 business days nor later than 20 business days following the day upon which PME's 1969 Earnings shall have been so determined, elect to either consummate the merger and the transactions contemplated hereby, subject to the adjustments referred to in the first paragraph of § 3 hereof, or cancel and annul this Agreement, in which event the parties hereto shall be liable only for the liabilities provided for in § 17 hereof.

For the purposes of this § 3, the day upon which PME's 1969 Earnings shall have been determined shall be 20 days following the day upon which Grace shall have delivered to the New Corporation the statement setting forth PME's 1969 Earnings as provided in the second paragraph of this § 3; provided, however, that if either Grace or the New Corporation shall give written notice of objection to said statement the day of determination shall be the date of receipt by Grace and the New Corporation of the determination of the arbitrator or such earlier day as Grace and the New Corporation shall have received from the other written agreement to a determination of PME's 1969 Earnings.

**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) a Certificate of Merger pursuant to Section 907 of the Business Corporation Law of the State of New York is filed by the Department of State of the State of New York in accordance with such Section 907.

In the event that the Effective Date shall not have occurred on or prior to the record date for the determination of holders of Grace Common Stock who are entitled to receive the cash dividend payable on such Stock in June, 1970, this Agreement shall, unless Grace or PME shall have exercised the option referred to in § 17 hereof, terminate and be of no further force or effect and the parties hereof shall have no further obligations hereunder except to the extent set forth in said § 17.

On the Effective Date the constituent and merging corporations shall become a single corporation, the separate existence of PME 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 Business Corporation Law of the State of New York 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 PME 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 PME, 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 PME 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 PME 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 PME Stock as provided for hereinabove. PME 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 PME 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 PME 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 PME 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. Additional Shares; 1973 Closing.** If during the last six calendar months of 1972 the arithmetic average (the "Arithmetic Average") of the means between the daily high and low selling prices per share (regular way) of Grace Common Stock on the New York Stock Exchange for all days on which shares of Grace Common Stock are traded on such Exchange during such six-month period is less than \$50 per share, Grace shall issue, on January 31, 1973 (the "1973 Closing"), to each shareholder of record of PME on the Effective Date:

(A) That number of shares of Grace Common Stock which, when added to the number of shares of Grace Common Stock issued to such shareholder upon conversion of his PME Stock pursuant to §2(h)(ii) hereof, will be equal to the quotient obtained by dividing the Guaranteed Value (as hereinafter defined) by the Arithmetic Average or \$32, whichever is higher; provided, however, that if such shareholder shall, prior to January 1, 1973, have sold or otherwise disposed of any shares of Grace Common Stock received by him upon such conversion then the Guaranteed Value shall be reduced by an amount equal to the product obtained by multiplying the number of shares so sold or otherwise disposed of by the amount by which the last sales price per share (or \$50, whichever is the lesser amount) of Grace Common Stock on the New York Stock Exchange on the day of such sale or other disposition exceeded the Arithmetic Average or \$32, whichever is higher. If any shares of Grace Common Stock which have been deposited by a shareholder in escrow pursuant to the Agreement of Indemnity dated September 15, 1969 entered into between Grace and the shareholders of PME are delivered to Grace in satisfaction of any claim which Grace may have, the delivery of such shares shall be deemed to have been a sale by such shareholder at a price equal to the amount at which such shares shall have been valued as provided in the Agreement of Indemnity. The term "Guaranteed Value" with respect to each shareholder of PME shall mean the dollar value obtained by multiplying the number of shares of Grace Common Stock received by such shareholder upon conversion of his PME Stock pursuant to §2(h)(ii) above by \$50.00; provided, however, that the number of shares of Grace Common Stock received by each shareholder pursuant to §2(h)(ii) shall be deemed to have been reduced by his pro-rata share of

(a) Waive the adjustments referred to in the first paragraph of § 3 hereof, whereupon the transactions hereby contemplated shall be effected in all respects as if PME's 1969 Earnings had been \$2,100,000 or more and the adjustments referred to in the first paragraph of § 3 hereof shall not be made; or

(b) Request that the Effective Date be deferred until PME's 1969 Earnings have been determined by the independent accountants as provided in the second paragraph of § 3 hereof (subject to the provisions of the third paragraph of § 3 hereof).

If PME's 1969 Earnings as determined by the independent accountants and binding upon the parties shall be \$2,100,000 or more or if Grace shall, by written notice to PME delivered not later than 10 business days following the day upon which said Earnings shall have been so determined, waive the adjustments referred to in the first paragraph of § 3 hereof, the transactions contemplated hereby shall be consummated in accordance with the terms of this Agreement in all respects as if said PME 1969 Earnings had been \$2,100,000 or more and the adjustments referred to in the first paragraph of § 3 hereof shall not be made.

If PME's 1969 Earnings as so determined shall be less than \$2,100,000 and Grace shall not have waived the adjustments referred to in the first paragraph of § 3 hereof, PME shall at its option, exercisable upon written notice delivered to Grace, not earlier than 10 business days nor later than 20 business days following the day upon which PME's 1969 Earnings shall have been so determined, elect to either consummate the merger and the transactions contemplated hereby, subject to the adjustments referred to in the first paragraph of § 3 hereof, or cancel and annul this Agreement, in which event the parties hereto shall be liable only for the liabilities provided for in § 17 hereof.

For the purposes of this § 3, the day upon which PME's 1969 Earnings shall have been determined shall be 20 days following the day upon which Grace shall have delivered to the New Corporation the statement setting forth PME's 1969 Earnings as provided in the second paragraph of this § 3; provided, however, that if either Grace or the New Corporation shall give written notice of objection to said statement the day of determination shall be the date of receipt by Grace and the New Corporation of the determination of the arbitrator or such earlier day as Grace and the New Corporation shall have received from the other written agreement to a determination of PME's 1969 Earnings.

**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) a Certificate of Merger pursuant to Section 907 of the Business Corporation Law of the State of New York is filed by the Department of State of the State of New York in accordance with such Section 907.

In the event that the Effective Date shall not have occurred on or prior to the record date for the determination of holders of Grace Common Stock who are entitled to receive the cash dividend payable on such Stock in June, 1970, this Agreement shall, unless Grace or PME shall have exercised the option referred to in § 17 hereof, terminate and be of no further force or effect and the parties hereof shall have no further obligations hereunder except to the extent set forth in said § 17.

On the Effective Date the constituent and merging corporations shall become a single corporation, the separate existence of PME 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 Business Corporation Law of the State of New York 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

the Withheld Shares which are retained by Grace if the PME 1969 Earnings are less than \$2,100,000. For the purposes of this paragraph, a gift by any shareholder (other than charitable contributions for which such shareholder receives income tax benefit) 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 January 1, 1973. If such donee does sell or otherwise dispose of any of such shares prior to January 1, 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; plus

(B) that number of shares of Grace Common Stock which, when valued at the Arithmetic Average per share, shall equal the aggregate amount of simple interest (computed at the rate of 4% per annum from the Effective Date to January 31, 1973) which would be payable on the aggregate value (when valued at the Arithmetic Average per share) of the shares of Grace Common Stock issued pursuant to clause (A) above;

provided, however, that under no circumstances (except those referred to in § 17 hereof) shall the number of additional shares issued pursuant to § 6(A) exceed 506,250 shares if 5,5585 shares of Grace Common Stock has been issued pursuant to § 2(h) (ii) for each share of PME Stock and 507,938 shares if 5,5770 shares of Grace Common Stock have been so issued for each share of PME Stock

The shares, if any, to be issued by Grace pursuant to the preceding paragraph of this § 6 (hereinafter called the "Additional Shares") shall be issued pro rata to the shareholders of record of PME on the Effective Date. Grace shall not be obligated to issue fractional shares of Grace Common Stock at the 1973 Closing. If, at the 1973 Closing, the aggregate number of additional shares of Grace Common Stock to be issued is a number of full shares and a fraction of a share, the aggregate number of additional shares to be delivered by Grace will be increased to the next higher number of full shares. The shareholders of PME shall make appropriate arrangements among themselves for the settling of fractional interests in the Additional Shares and shall advise Grace of such arrangements.

The obligation of Grace to issue the Additional Shares pursuant to the provisions of this Section 6 shall not be subject to offset or reduction by virtue of any matter or thing including without limitation any indemnity which may be given by any PME shareholder to Grace.

In the event that after the date hereof and prior to the Effective Date and/or the 1973 Closing (i) any recapitalization, or reclassification, split-up, combination or consolidation of shares of Grace Common Stock shall be effected, or (ii) the outstanding shares of Grace Common Stock shall, in connection with a merger or consolidation of Grace, or a sale by Grace of all or a part of its assets, be exchanged for a different number or class of shares of stock or other securities of Grace or for the shares of the capital stock or other securities of any other corporation, or (iii) the record date for determination of holders of Grace Common Stock entitled to receive a dividend payable in Grace Common Stock shall occur, an equitable adjustment in the number and class of the securities to be issued by Grace as provided in § 2(h) and § 6 hereof shall be made, to such extent as may be necessary to prevent dilution of the rights of the shareholders of PME and Grace hereunder.

**7. Representations and Warranties of PME.** PME represents and warrants to Grace as follows:

(a) PME has heretofore delivered to Grace a true and complete schedule (certified by an Executive Vice President of PME) setting forth the name and jurisdiction of incorporation of PME, and of each corporation (herein called "Subsidiary") a majority of the voting stock of which is owned or held directly or indirectly by PME, the authorized, issued and outstanding capital stock thereof and the par value and tax basis of such stock.

(b) Each Company is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of incorporation specified in subsection (a) of this § 7. PME has heretofore delivered to Grace a true and complete schedule (dated the date hereof, identified specifically as a schedule to this subsection and certified by an Executive Vice President of PME) setting forth the jurisdictions in which each Company is licensed or qualified to do business as a foreign corporation. Each Company is duly licensed or qualified to do business and is in good stand-

ing under the laws of the jurisdictions specified in such schedule, and neither the character or location of the properties owned by such Company nor the nature of the business conducted by it makes license or qualification under the laws of any other jurisdiction necessary. Each 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 restated Certificates of Incorporation of PME and F.A.O. Schwarz and the copies of the Certificates of Incorporation of each of the other Principal Companies, and all amendments thereto (certified by the Secretary of State of such Company's jurisdiction of incorporation) and of the By-Laws as amended to date of each Company (certified by the Secretary of such Company) which have heretofore been delivered to Grace are true and complete.

(c) All of the issued and outstanding shares of the capital stock of each Principal Company are validly issued and outstanding and fully paid. There are no outstanding subscriptions, options, rights, warrants, calls, commitments or agreements relating to shares of any Principal Company to which such Principal Company or any other Principal Company is a party or by which it is bound, except as set forth in a schedule (dated the date hereof, identified specifically as a schedule to this subsection and certified by an Executive Vice President of PME) heretofore delivered by PME to Grace.

(d) PME is the record owner and the beneficial owner of all of the issued and outstanding shares of capital stock of each Subsidiary except F.A.O. Schwarz, of whose issued and outstanding shares of common stock PME owns 8,737 shares and of whose issued and outstanding Class B common stock PME owns no shares. Each Company's title to such shares owned of record and beneficially by it is good, valid and indefeasible and free and clear of all security interests, liens, encumbrances, options, calls, pledges, trusts, voting trusts and other stockholder agreements, assessments, covenants, restrictions, reservations, commitments, obligations, liabilities and other burdens, except as set forth in a schedule (dated the date hereof, identified specifically as a schedule to this subsection and certified by an Executive Vice President of PME) heretofore delivered by PME to Grace.

(e) No Company owns or controls any capital stock, bonds or other securities of, or has any proprietary interest in so as to control or otherwise controls the management or policies of, any corporation, partnership, firm, association or business organization, entity or enterprise except the Subsidiaries. For purposes of this subsection (e) of this § 7 and of subsection (e) of § 9 of this Agreement, "control" means the power, by means of ownership of securities, contract or otherwise, to elect or designate a majority of the board of directors or other managing body of a corporation, partnership, firm, association, or business organization, entity or enterprise, or to direct in any manner the management or policies of a corporation, partnership, firm, association or business organization, entity or enterprise.

None of the directors of PME and none of the officers of any Company owns directly or indirectly any interest in, or is a director, officer or employee of, any corporation, partnership, firm, association or business organization, entity or enterprise (other than the Companies) which is a competitor, potential competitor, supplier or customer of any Company or is in any way associated with or involved in the business conducted by any Company. None of the officers of any Company knows that any of such officers owns directly or indirectly any interest in, or is a director, officer or employee of, any corporation, partnership, firm, association or business organization, entity or enterprise which is a substantial competitor, supplier or customer of Grace or any of its subsidiaries, provided that ownership of not more than 2% of the capital stock of any corporation listed on a national securities exchange shall not be deemed to be ownership of an interest in such corporation for purposes of this paragraph.

(f) PME has delivered to Grace a true and complete schedule (dated the date hereof, identified specifically as a schedule to this subsection and certified by the Secretary of PME) setting forth the directors and officers of each Company.

(g) PME has heretofore delivered to Grace copies of (i) the Consolidated Balance Sheet of the Companies as at January 31, 1969 (herein called the "January 31 Balance Sheet") and Consoli-

dated Statements of Income and Retained Earnings of the Companies for the five years ended January 31, 1969, certified by J. K. Lasser & Company and of (ii) a Consolidated and Consolidating Balance Sheets as at January 31, 1969 with respect to the financial condition of The Baker & Taylor Co. of Texas, Inc., The Book Buyers Guide, Inc., Library Service Company, Inc. and F.A.O. Schwarz, and the Baker & Taylor Division and Consolidated and Consolidating Statements of Income and Retained Earnings of The Baker & Taylor Co. of Texas, Inc., The Book Buyers Guide, Inc., Library Service Company, Inc. and F.A.O. Schwarz, and the Baker & Taylor Division for the five years ended January 31, 1969, certified by the Treasurer of PME. The above mentioned Balance Sheets present fairly the consolidated financial condition of the Companies and Division as at January 31, 1969, and each of said Consolidated Statements of Income and Retained Earnings presents fairly the consolidated results of the operations of the Companies and Division for the period it purports to cover, in accordance with generally accepted accounting principles applied on a basis consistent with that of prior periods except as may be stated in the accountants' certificate or notes to such financial statements. The assets reflected in the Balance Sheets referred to in (ii) above include all of the assets owned or utilized by the Companies and the Division referred to therein.

(h) As of January 31, 1969 no Company had any debts, liabilities or obligations of any nature whether accrued, absolute, contingent or other, and whether due or to become due, including, but not limited to, liabilities or obligations on account of taxes or other government charges, or penalties, interest or fines thereon or in respect thereof, and there was no basis for the assertion against any Company of any such debt, liability or obligation, except to the extent set forth on or reserved against or reflected in the January 31 Balance Sheet and the footnotes thereto.

(i) Since January 31, 1969, there has not been:

(i) Any change in the condition (financial or other), properties, assets, liabilities, business or prospects of any Principal 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 any Principal Company;

(iii) Any declaration, setting aside or payment of any dividend or other distribution on or in respect of shares of the capital stock of any Company or any direct or indirect redemption, retirement, purchase or other acquisition by any Company of any such shares, except as specified in a schedule (dated the date hereof, identified specifically as a schedule to this paragraph of this subsection and certified by the Treasurer of PME) heretofore delivered by PME to Grace;

(iv) Any change in the authorized, issued or outstanding capital stock of any Company, any issuance of shares of capital stock of any Company or any options, rights, warrants, calls or commitments issued, created, granted or entered into by any Company relating to the authorized, issued or outstanding shares of capital stock of any Company, except as specified in a schedule (dated the date hereof, identified specifically as a schedule to this paragraph of this subsection and certified by the Treasurer of PME) heretofore delivered by PME to Grace;

(v) Any increase in the total compensation (including, but not limited to, normal bonus, profit sharing and other extra compensation) or in the rate of total compensation or rate of commissions payable or to become payable by any Company to any director, officer, salaried employee earning \$20,000 per annum or more, salesman or agent, or any general increase in the total compensation or rate of total compensation payable or to become payable by any Company to hourly employees who are not covered by collective bargaining agreements, or to salaried employees earning less than \$20,000 per annum ("general increase" for purposes of this paragraph meaning any increase generally applicable to a class or group of employees and not including 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 by any Company at total compensation in excess of \$20,000 per annum, or any payment by any Company to any director, officer, employee,

salesman or agent of any extraordinary or special extra compensation or bonus, except as specified in a schedule (dated the date hereof, identified specifically as a schedule to this paragraph of this subsection and certified by the Treasurer of PME) heretofore delivered by PME to Grace,

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

(vii) Any debt, obligation or liability (whether accrued, absolute, contingent or other and whether due or to become due and whether or not presently outstanding) incurred or entered into by any Company except such as have been incurred or entered into in the ordinary course of business and obligations incurred in effecting the transactions contemplated by this Agreement;

(viii) Any sale, lease, abandonment or other disposition by any Principal 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 any 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

(ix) Any strike, work stoppage or labor trouble affecting any Principal Company.

(j) Each Company has duly and timely filed all tax returns required to be filed by it by any governmental authority and has paid all taxes shown to be due and payable on such returns, all assessments received by it and all other taxes, governmental charges, penalties, interest and fines due and payable by it on or before the date of this Agreement. The United States federal income tax returns of each Company have been audited by the Internal Revenue Service for all taxable years up to and including the year with respect to each Company specified in a schedule (dated the date hereof, identified specifically as a schedule to this subsection and certified by the Treasurer of PME) heretofore delivered by PME to Grace, 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 by any Company or the payment by any Company or assessment against any Company of any tax, governmental charge or deficiency, and there are no suits, actions, claims, investigations, inquiries or proceedings now pending against any Company in respect of taxes, governmental charges or assessments, or any matters under discussion with any federal, state, local or other governmental authority relating to taxes, governmental charges or assessments, or any claims for additional taxes, governmental charges or assessments asserted by any such authority, except as set forth in the schedule referred to above in this subsection. The provisions made for taxes and governmental charges on the January 31 Balance Sheet are sufficient for the payment of all unpaid taxes and governmental charges payable by the Companies attributable to all periods ended on or before January 31, 1969.

(k) PME has heretofore delivered to Grace a true and complete schedule (dated the date hereof, identified specifically as a schedule to this subsection and certified by the Treasurer of PME) setting forth the name and the current annual salary and other compensation or the rate of compensation payable by the Principal Companies to each director, each officer, each employee and each salesman thereof whose current total annual compensation or estimated compensation from the Companies is \$20,000 or more, and the profit-sharing, bonus or other form of extra compensation paid or payable by each Principal Company to or for the benefit of each such person for the year ended January 31, 1969.

(l) PME has heretofore delivered to Grace a true and complete schedule (dated the date hereof, identified specifically as a schedule to this subsection and certified by an Executive Vice President of PME) setting forth (i) a complete description by metes and bounds or lot, block and section of each parcel of real property owned by each Company together with a summary description of the buildings, structures and improvements thereon, (ii) a description of each parcel of real property leased to or by each Company together with a summary description of the buildings, structures and

improvements thereon, and (iii) a description of all other interests of each Company in real property.

Each Principal Company has good and marketable title in fee simple absolute (subject to encumbrances of record set forth in the aforesaid schedule to this subsection) to all real property which it purports to own (including, but not limited to, that reflected on the January 31 Balance Sheet) and to the buildings, structures and improvements thereon, and good and marketable title to all other interests in real property which it purports to own, in each case free and clear of all security interests, liens and encumbrances except as set forth in the aforesaid schedule to this subsection. Each Principal Company has all easements and rights, including, but not limited to, easements for power lines, water lines, sewers, roadways and other means of ingress and egress, necessary for all operations conducted by such Company.

(m) Each Principal Company has good and marketable title to all personal property which it purports to own (including, but not limited to, that reflected on the January 31 Balance Sheet except as disposed of since January 31, 1969 in the ordinary course of business), free and clear of all security interests, liens and encumbrances, except as set forth in a schedule (dated the date hereof, identified specifically as a schedule to this subsection and certified by an Executive Vice President of PME) heretofore delivered by PME to Grace.

(n) All buildings, offices, shops and other structures and all machinery, equipment, tools, dies, fixtures, motor vehicles, spare parts and other properties owned and now being used by the Principal Companies are, taken as a whole, in good operating condition and repair.

Neither the whole nor any portion of any real property owned or occupied by any Principal Company has been condemned, requisitioned or otherwise taken by any public authority, and none of the Principal Companies nor any director or officer thereof knows or has any grounds to believe that any such condemnation, requisition or taking is threatened or contemplated. None of the properties owned, occupied or operated by any Principal Company, or the ownership, occupancy or operation thereof, is in material violation of any law or any building, zoning or other ordinance, code, rule or regulation, and no notice from any governmental body or other person has been served upon any Principal Company or upon any property owned, occupied or operated by any Principal Company claiming any material violation of any such law, ordinance, code, rule or regulation or requiring, or calling attention to the need for, any material work, repairs, construction, alterations or installation on or in connection with said property which has not been complied with. Each Principal Company has the right to use its properties for all operations conducted by such Company.

(o) No Principal Company owns, uses or licenses any patent or any trade-mark, trade name, brand name or copyright, and no patents, trade-marks, trade names, brand names, copyrights, licenses, inventions, processes, know-how, formulae or trade secrets other than as set forth on the schedule (dated the date hereof, identified specifically as a schedule to this subsection and certified by an Executive Vice President of PME) are necessary for the conduct of the business of any Company as now conducted. Neither any Company nor any director or officer thereof knows or has any grounds to believe that there exist any new developments in the business conducted by any Company or any new or improved materials, products, processes or services useful in connection with the business of any Company as now conducted which may adversely affect the properties, assets, business or prospects of any Company.

(p) PME has heretofore delivered to Grace a true and complete schedule (dated the date hereof, identified specifically as a schedule to this subsection and certified by an Executive Vice President of PME) of the following contracts, agreements, commitments and other documents to which any Principal Company is a party or by which any Principal Company or any of the properties of any Principal Company is in any way affected or bound:

(i) All contracts, agreements and commitments in respect of the sale of products or the performance of services, or for the purchase of raw materials, supplies, services or utilities, other than contracts, agreements and commitments incurred in normal course of business by the



Principal Companies and either terminable by the Principal Companies without penalty or to be fully performed within 12 months from the date hereof.

(ii) All sales agency or distributorship agreements and franchises.

(iii) All employment and non-disclosure agreements.

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

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

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

(vii) All loan and credit agreements, security agreements, guaranties, indentures, mortgages, pledges, conditional sale or title retention agreements, equipment obligation, lease and lease purchase agreements and instruments evidencing indebtedness.

(viii) All contracts, agreements and commitments other than those of the types covered by paragraphs (i) through (vii), inclusive, of this subsection (c) of this §7, which (A) involve payments or receipts by the Principal Companies of \$25,000 or more, or (B) otherwise materially affect the condition (financial or other), properties, assets, businesses or prospects of any **Principal Company and are not in the ordinary course of the business of such Principal Company.**

Except as set forth in the aforesaid schedule, all of such contracts, agreements and commitments are legally valid and binding and in full force and effect. Copies of all the documents described in the aforesaid schedule to this subsection have heretofore been delivered by PME to Grace and are true and complete and include all amendments and supplements thereto and modifications thereof.

(q) No Company is, or is alleged to be, materially in default under or in breach of any term or provision of any contract, agreement, lease, license, commitment, instrument or obligation.

(r) PME has heretofore delivered to Grace current audited financial statements showing the assets of each pension, profit sharing, retirement, bonus and other employee benefit plan of each Company a statement of the current annual cost and any past service cost of each such plan, a current report of a qualified actuary on each such plan the cost of which is determined by actuarial methods, a statement of the extent to which such cost and any liability of any Company under each such plan has been funded and, with respect to each funded amount which constitutes a separate trust fund under any such plan, a currently effective United States Internal Revenue Service ruling or determination letter holding such trust to be exempt from federal income tax. There has been no subsequent amendment of any such plan or trust which might affect the current validity of any such ruling or determination letter.

(s) PME has heretofore delivered to Grace a true and complete schedule (dated the date hereof, identified specifically as a schedule to this subsection and certified by the Treasurer of PME) setting forth (i) the name of each bank in which any 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 name of each person, firm, association, corporation or business organization, entity or enterprise holding a general or special power of attorney from any Company and a summary of the terms thereof.

(t) Except as set forth in a schedule (dated the date hereof, identified specifically as a schedule to this subsection and certified by an Executive Vice President of PME, there are no suits, actions or claims, no investigations or inquiries by any administrative agency or governmental body, and no legal, administrative or arbitration proceedings pending or threatened against any Principal Company or any of the properties, assets, business or prospects of any Principal Company or to which

any Principal Company is or might become a party, and neither any Principal Company nor any director or officer thereof knows or has any grounds to know of any basis or grounds for any such suit, action, claim, investigation, inquiry or proceeding. Except as specified in a schedule (dated the date hereof, identified specifically as a schedule to this subsection and certified by an Executive Vice President of PME) heretofore delivered to Grace, there is no outstanding order, writ, injunction or decree of any court, administrative agency or governmental body or arbitration tribunal against or affecting any Principal Company or any of the properties, assets, business or prospects of any Principal Company.

(u) No Principal Company has failed to obtain or maintain in full force and effect any governmental license or permit necessary to conduct its business or to operate its properties and assets, no violations exist or have been recorded in respect of any governmental license or permit of any Principal Company, no proceeding is pending or threatened looking toward the revocation or limitation of any governmental license or permit and there is no basis or grounds for any such revocation or limitation.

(v) PME has heretofore delivered to Grace a true and complete schedule (dated the date hereof, identified specifically as a schedule to this subsection and certified by the Treasurer of PME) 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 each Principal Company on its properties, assets, business or personnel, and true and complete copies of the most recent inspection reports, if any, received from insurance underwriters as to the condition of its properties and assets or the conduct of its business. All insurance policies maintained by each Principal Company on its properties, assets, business or personnel are in full force and effect and, except as specified in the aforesaid schedule to this subsection, all pending claims purported to be covered by such insurance policies are validly covered thereby.

(w) All notes and accounts receivable of each Principal Company shown on the January 31 Balance Sheet and all notes and accounts receivable acquired by it subsequent to January 31, 1969 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 January 31 Balance Sheet, the applicable reserves in respect thereof reflected on the January 31 Balance Sheet, and (ii) with respect to notes and accounts receivable acquired subsequent to January 31, 1969, the applicable reserves set up on the books of such Principal 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 such Company subsequent to January 31, 1969 as the proportion which the applicable reserves reflected on the January 31 Balance Sheet are of the aggregate recorded amounts of the notes and accounts receivable on the January 31 Balance Sheet.

(x) The inventories of each Company included in assets shown on the January 31 Balance Sheet and the inventories acquired by it subsequent to January 31, 1969 consist of items of a quality and quantity usable and salable or readily returnable for full credit 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 Companies of stating inventory at the lower of cost or estimated realizable market value, on a first-in, first-out basis, all in accordance with generally accepted accounting principles.

(y) The execution and delivery of this Agreement by PME 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 Certificate of Incorporation or the By-Laws of any Company, or any contract, agreement, indenture, mortgage, note, bond, license or other instrument or obligation to which any Company is now a party or by which any Company or any of the properties or assets of any Company may be bound or affected, or (ii) violate any order, writ, injunction or decree of any court, administrative agency or governmental body by which any Company is bound.

(z) This Agreement, the execution and delivery of this Agreement by PME, 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 PME, and, to the extent that this Agreement constitutes a contract between PME 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 PME in accordance with its terms.

(aa) No broker or finder has acted for any Company in connection with this Agreement or the transactions contemplated by this Agreement and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect thereof based in any way on agreements, arrangements, or understandings made by any Company.

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

8. **Representations and Warranties of Grace.** Grace represents and warrants to PME as follows:

(a) Grace is a corporation duly organized, validly existing and in good standing under the laws of the State of Connecticut. Grace 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 Grace's Certificate of Incorporation as amended to date (certified by an Assistant Secretary of Grace) and of its By-Laws as amended to date (certified by an Assistant Secretary of Grace) which have heretofore been delivered to PME are true and complete.

(b) As of the date hereof, the authorized, issued and outstanding capital stock of Grace consisted of the following:

<u>Class</u>	<u>Number of Shares</u>		
	<u>Authorized</u>	<u>Issued</u>	<u>Outstanding</u>
Preferred, \$100 par value .....	40,000	40,000	27,601
Class A Preferred, \$100 par value ...	50,000	50,000	48,132
Class B Preferred, \$100 par value ...	40,000	40,000	37,951
Class C Preferred, no par value .....	5,000,000	None	None
Common, \$1 par value .....	30,000,000	20,056,120	20,056,120

All of the issued and outstanding shares of capital stock of Grace are validly issued and outstanding and fully paid.

(c) Grace has heretofore delivered to PME true and complete copies of (i) the Consolidated Balance Sheet of Grace and subsidiary companies as at December 31, 1968 (herein called the "December 31 Balance Sheet"), the Consolidated Statement of Income and Retained Earnings for the year ended December 31, 1968, and the Consolidated Statement of Capital Surplus for the year ended December 31, 1968, certified by Price Waterhouse & Co.; and (ii) the Second Quarter Report of Grace and Subsidiary Companies, dated July 22, 1969, containing an unaudited summary of the results of operations for the six-month period ended June 30, 1969.

The December 31 Balance Sheet presents fairly the consolidated financial condition of Grace and its consolidated subsidiaries as at December 31, 1968, and said Statement of Income and Retained Earnings and of Capital Surplus present fairly the consolidated results of operations of Grace and its consolidated subsidiaries for the periods said Statements purport to cover, in accordance with generally accepted accounting principles applied on a basis consistent with that of prior periods, except as may be stated in the accountants' certificate or notes to such financial statements.

(d) Since December 31, 1968, there has not been any material adverse change in the condition (financial or other), properties, assets, business or prospects of Grace and its consolidated sub-

subsidiaries (taken as a single enterprise), except to the extent, if any, as may have been reflected in the above-mentioned Second Quarter Report of Grace.

(e) The execution and delivery of this Agreement by Grace and the consummation of the transactions contemplated hereby will not result in the breach of any of the terms or conditions of, or constitute a default under the Certificate of Incorporation or the By-Laws of Grace or any contract, agreement, indenture, mortgage, note, bond, license, or other instrument or obligation to which Grace is now a party or by which Grace or any of its properties or assets may be bound or affected.

(f) The shares of Grace Common Stock to be issued pursuant to this Agreement 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.

(g) This Agreement, the execution and delivery of this Agreement by Grace, and the consummation of the transactions contemplated by this Agreement, when approved and authorized by the Board of Directors of Grace, will have been duly and validly approved and authorized by all necessary corporate action and will be legally binding upon Grace in accordance with its terms.

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

**9. Conduct of the Companies' Businesses Prior to the Effective Date.** PME covenants and agrees with Grace that, except as otherwise consented to in writing by Grace or provided in this Agreement, pending the Effective Date:

(a) The business of each Company will be conducted only in the ordinary course;

(b) No change will be made in the Certificate of Incorporation or the By-Laws of any Company;

(c) No change will be made in the authorized, issued or outstanding capital stock of any Company; no additional shares of capital stock thereof will be issued; no options, rights, warrants, calls or commitments relating to the authorized, issued or outstanding capital stock of any Company will be issued, granted, created or entered into; and no shares of capital stock of any Company will be sold or transferred; provided, however, that F.A.O. Schwarz may issue additional shares of its common stock upon the conversion of presently outstanding Class B common stock and may issue up to 825 additional shares of Class B common stock pursuant to the agreements dated September 30, 1963 between F.A.O. Schwarz and certain officers thereof;

(d) No dividend or other distribution or payment will be declared, set aside, paid or made on or in respect of shares of the capital stock of any Company;

(e) No Company will merge, amalgamate or consolidate with any other corporation or acquire all or substantially all of the business or assets of any other person, partnership, firm, association, corporation or business organization, entity or enterprise or acquire ownership or control of any capital stock, bonds or other securities of, or any proprietary interest in, any partnership, firm, association, corporation or business organization, entity or enterprise, or of the management or policies thereof;

(f) Each Principal Company will use its best efforts to preserve the business organization of the Principal Companies intact, to keep available to Grace the services of the present officers, employees, distributors, brokers and agents of each Principal Company and to preserve for Grace the good will of customers, unions and others having business relations with each Principal Company;

(g) No increase will be made in the total compensation (including, but not limited to, normal bonus, profit sharing and other extra compensation) or the rate of total compensation or rate of commissions payable or to become payable by any Principal Company to any director, officer, salaried employee earning \$25,000 per annum or more, salesman or agent; no general increase will be made in the total compensation or rate of total compensation payable or to become payable by any Principal Company to hourly employees who are not covered by collective bargaining agreements, or to salaried employees earning less than \$25,000 per annum ("general increase" having the meaning specified in paragraph (v) of subsection (i) of § 7 hereof); no employee will be hired by any Principal Company at total compensation payable by the Principal Companies of \$25,000 per annum or more; no extraordinary or special extra compensation or bonus will be paid by any Principal Company; and no employee benefit arrangements of any kind, including, but not limited to, the types specified in paragraph (iv) of subsection (p) of § 7 hereof, will be adopted or entered into, or be amended, modified or changed in any respect;

(h) No change will be made in the accounting methods and practices followed by the Principal Companies or in the depreciation or amortization policies or rates heretofore adopted;

(i) No Principal Company will enter into, create or assume any obligations for borrowed money (except for indebtedness payable in less than one year incurred in the ordinary course of business) or any security agreement, lien, mortgage, deed of trust, pledge, or conditional sale or other title retention agreement upon any of its properties or assets whether now owned or hereafter acquired, or assume, guarantee, endorse or otherwise become liable with respect to the obligations of any person, partnership, firm, association, corporation or business organization, entity or enterprise other than the Principal Companies; and no Principal Company will make loans or advances to, or assume, guarantee, endorse or otherwise become liable with respect to the capital stock or dividends of, any person, partnership, firm, association, corporation or business organization, entity or enterprise other than the Principal Companies;

(j) Each Company will duly and timely file all tax returns required to be filed by it and will promptly pay all taxes, assessments, governmental charges, penalties, interest and fines which shall be due and payable; no Company will enter into any agreement, waiver or other arrangement providing for an extension of time with respect to the filing of any tax return or the payment or assessment of any tax, governmental charge or deficiency, provided that any Company may contest in appropriate proceedings any tax, governmental charge or assessment which may be contested in good faith and for which adequate provision has been made on the books of such Company;

(k) No Company will sell, lease, abandon, assign, transfer, license or otherwise dispose of any real property or patent or interest thereunder or other intangible assets, or, other than in the ordinary course of business, any machinery, equipment or other operating property;

(l) The Company will use its best efforts to keep and maintain all buildings, offices, shops and other structures and all machinery, equipment, fixtures, motor vehicles and other properties owned and now being used by the Principal Companies in good operating condition and repair;

(m) No Principal Company will enter into or assume any contract, agreement or commitment except for normal and ordinary contracts, agreements and commitments not involving payments or receipts by the Principal Companies in the case of any single contract, agreement or commitment of more than \$200,000 involving purchase or sale of books or purchase of toys or of more than \$25,000 in the case of any other transaction;

(n) No Principal Company will materially default under, or become materially in breach of any term or provision of, or suffer or permit to exist any condition or event which, after notice or lapse of time or both, would constitute a material default under, any contract, agreement, lease, license, commitment, instrument or obligation;

(o) No change will be made affecting the banking and safe deposit arrangements and powers of attorney referred to in subsection (s) of § 7 hereof, no new bank accounts or safe deposit boxes will be opened and no new powers of attorney will be granted;

(p) Each Principal Company will duly and timely file all reports required to be filed with governmental authorities and will duly observe and conform to all laws, rules, regulations, ordinances, codes, orders, licenses and permits relating to any of its properties or applicable to its business;

(q) Each Principal Company will continue to maintain in full force and effect all insurance policies now in effect or renewals thereof, will take out such additional insurance as may be reasonably requested by Grace and will not default with respect to any provision of, and will give all notices and present all claims under, all insurance policies in due and timely fashion; and

(r) Each Principal Company will give to Grace, and to Grace's counsel, accountants, engineers and other representatives, reasonable access during normal business hours throughout the period prior to the Effective Date to all of its offices, properties, books, contracts, commitments, records and affairs so that Grace may inspect and audit them, and the Principal Companies will furnish to Grace copies (certified, if requested) of all documents and information concerning the properties and affairs of the Principal Companies as Grace may reasonably request. The Principal Companies will request their accountants to make available to Grace's accountants all working papers, data and information prepared or obtained by the Principal Companies' accountants in connection with their preparation or audit of financial statements of the Principal Companies, and will cooperate fully in permitting and assisting the examination by Grace's accountants of all such financial statements and matters relating thereto. Notwithstanding the foregoing, Grace, its counsel, accountants, engineers and other representatives may be denied access to and information concerning the "Publishing Business" as hereinafter defined and information concerning discounts from publishers' prices allowed to Baker & Taylor customers and flow charts of Baker & Taylor operations; provided, however, that this restriction shall not apply to the independent auditors who conduct the examination and audit referred to in § 3 and § 11 hereof, who shall not disclose such information to Grace.

#### 10. Spin Off of Publishing Business.

PME shall, prior to the Effective Date:

(a) Create or cause to be created a new corporation (hereinafter called the "New Corporation"), incorporated under the laws of the State of New York or Delaware.

(b) Transfer to the New Corporation the Publishing Business Assets (as hereinafter defined) in exchange for all of the authorized capital stock of the New Corporation.

(c) Assign to the New Corporation all of PME's right, title, and interest in and to (i) the contracts, leases, licenses, commitments and undertakings listed on the schedule dated the date hereof, identified specifically as the schedule referred to in this Section and signed by an Executive Vice President of PME and of Grace, and (ii) all other contracts, leases, licenses, commitments and undertakings entered into in the course of PME's Publishing Business between the date hereof and the date of such assignment.

(d) Cause the New Corporation to assume and agree to perform, observe and fulfill all of the terms, provisions, conditions and obligations which, on the part of PME, are to be performed, observed, and fulfilled under the contracts, leases, licenses, commitments and undertakings referred to in (c) above.

(e) Cause the New Corporation to assume and agree to pay and discharge in due course all debts and liabilities of PME to the extent set forth on, reserved against or reflected in the Balance Sheet referred to below in this § 10, together with all debts and liabilities relating to the operation of PME's Publishing Business arising between the date hereof and the date of such assumption and agreement.

(f) Cause the New Corporation to execute and deliver to Grace, as the surviving corporation, an agreement pursuant to which the New Corporation agrees to indemnify and hold Grace harmless from and against any and all liability, loss or damage which may be suffered or incurred by it

by reason of the failure of the New Corporation to (i) perform, observe and fulfill all of the terms, provisions, conditions and obligations of the contracts, leases, licenses, commitments and undertakings assigned to it pursuant to (c) above and to (ii) pay and discharge in due course all of the debts and liabilities assumed by it pursuant to (e) above.

(g) Distribute to the shareholders of PME, pro rata, all of the capital stock of the New Corporation.

From and after the date of this Agreement, PME's Publishing Business shall be operated as if it were a separate corporate entity, having available to it only those assets and properties set forth on the above-mentioned Balance Sheet and the rights appurtenant thereto and PME shall not, in the operation of the Publishing Business, utilize or have recourse to any of the assets, properties or rights of any of the Companies other than those assets and properties set forth on said Balance Sheet and the rights appurtenant thereto.

The "Publishing Business Assets" shall mean and include those assets and properties and the rights appurtenant thereto set forth on the Balance Sheet dated as of January 31, 1969, identified specifically as the Balance Sheet referred to in this Section and signed by an Executive Vice President of PME and of Grace, subject to such changes in such assets, properties and rights as may have occurred from the date thereof until the date such assets, properties and rights are transferred to the New Corporation. Included among the assets to be conveyed to the New Corporation shall be the exclusive right to own and use, from and after the Effective Date, the name "Parents' Magazine Enterprises, Inc." and any variants thereof.

The term "Publishing Business" shall mean the business of publishing and selling the books, magazines, periodicals, film strips and other audio-visual materials that PME is making, publishing and selling on the date hereof, including all activities directly and indirectly related thereto, but shall not include those activities carried on by its subsidiary F.A.O. Schwarz or by its Baker & Taylor Division.

**11. Audit of Financial Statements of PME.** PME 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 PME and its Subsidiaries as of the close of business on September 30, 1969 and to deliver to Grace not later than November 30, 1969 the Consolidated Balance Sheet of the Companies as at September 30, 1969 and related Consolidated Statement of Income and Retained Earnings of the Companies for the 8 months then ended. PME shall permit Price Waterhouse & Co. to conduct the aforesaid examination and audit, shall cooperate fully therein, and shall cause J. K. Lasser & Company, 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 financial statements referred to in § 7(g) hereof.

The parties hereto acknowledge that the purpose of the foregoing is to permit the aforesaid financial statements to be certified by Price Waterhouse & Co. as presenting fairly the financial position of the Companies as at September 30, 1969, and the result of operations of the Companies for the 8 month period then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of prior periods.

**12. Efforts of Grace and PME.** Grace and PME 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 New York, or either of such states, to consummate and make effective the merger herein provided for and to carry out the purposes of this Agreement, including such amendments to this Agreement as may be necessary or appropriate to obtain the requisite tax rulings provided for herein.

**13. Conditions Precedent to Obligations of Grace.** All obligations of Grace under this Agreement are subject to the fulfillment, prior to or on the Effective Date, of each of the following conditions, provided that Grace may waive the requirement for fulfillment of any such condition in whole or in part by a written instrument executed by the President, any Executive Vice President or any Vice President of Grace:

(a) Each and every representation and warranty of PME 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) Each Company 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) PME shall have delivered to Grace a certificate of the President or an Executive Vice President and the Treasurer or an Assistant Treasurer of PME, dated the Effective Date, certifying to the fulfillment of the conditions set forth in subsections (a) and (b) of this § 13.

(d) PME shall have delivered to Grace an opinion of Messrs. Parr, Doherty, Polk & Sargent, counsel for PME, 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 (b) of § 7 of this Agreement.

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

(iii) All legal and corporate proceedings necessary to be taken by PME 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 PME and constitutes a valid and binding legal obligation of PME.

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

(v) Except as specified in such opinion such counsel does not know or have any reason to believe that any 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 any 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 PME 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 PME 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.

Such opinion may state that such counsel have made no investigation with respect to the matters covered by paragraphs (vi) and (vii) of this subsection (d). With respect to matters governed by



the laws of jurisdictions other than New York, such opinion may be based upon the opinions of counsel of such jurisdictions, copies of which shall be delivered to Grace, in which event such opinion shall state that Grace is justified in relying on such other opinions.

(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 and shall have received the financial statements referred to in § 11 hereof.

(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 in the exercise of reasonable judgment.

(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 PME 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 or legality 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 Companies to the real and personal property referred to in subsections (l) and (m) of § 7 of this Agreement are as represented in such subsections.

(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) Grace shall have received written Federal income tax rulings from the Internal Revenue Service, or a written opinion from its tax counsel, to the effect that:

(i) No gain or loss will be recognized to PME upon (A) PME's transfer to the New Corporation of the assets, activities, and stock of wholly-owned subsidiaries relating to the publishing business in consideration of issuance of all of the stock of the New Corporation and its assumption of certain liabilities of PME in a reorganization under Section 368(a)(1)(D) of the U.S. Internal Revenue Code, or (B) PME's distribution of the New Corporation's stock to PME's shareholders.

(ii) The statutory merger of PME into Grace will constitute a reorganization under Section 368(a)(1)(A) of such Code.

(iii) No gain or loss will be recognized to PME or Grace in connection with such statutory merger.

(m) PME shall have delivered to Grace an affidavit setting forth the tax basis to PME of the stock of the Subsidiaries to be acquired by Grace pursuant to the merger contemplated hereby.

(n) Grace shall have entered into an agreement with the Prudential Insurance Company of America ("Prudential") providing for an amendment of the Note Agreement dated July 25, 1968 between PME and Prudential, such amended Note Agreement to contain provisions consistent with and no more restrictive than the provisions contained in any presently existing loan agreement to which Grace is a party.

(o) 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.

**14. Conditions Precedent to Obligations of PME.** All obligations of PME under this Agreement are subject to the fulfillment, prior to or on the Effective Date, of each of the following conditions, provided that PME may waive the requirement for fulfillment of any such condition in whole or in part by a written instrument executed by the President or any Vice President of PME if such waiver is permitted in accordance with the provisions of § 21 of this Agreement:

(a) Each and every representation and warranty of Grace contained in this Agreement and all schedules hereto and in all statements (including, but not limited to, financial statements), certificates and other documents furnished to PME 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) Grace 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) Grace shall have delivered to PME an opinion of the General Counsel of Grace, dated the Effective Date, in form and substance satisfactory to PME, that:

(i) Grace's corporate existence and good standing are as represented and warranted in subsection (a) of § 8 of this Agreement.

(ii) The shares of Grace Common Stock (including the Additional Shares) to be issued pursuant to this Agreement will, when issued 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.

(iii) The issue and delivery of Grace Common Stock pursuant to this Agreement are, under the circumstances contemplated by this Agreement, exempt from registration under the Securities Act of 1933, as amended.

(iv) All legal and corporate proceedings necessary to be taken by Grace in connection with the approval of this Agreement and the authorization 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 approved, authorized, executed and delivered by Grace and constitutes a valid and binding legal obligation of Grace.

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

With respect to matters governed by the laws of Connecticut, such opinion may be based upon the opinion of Connecticut counsel, a copy of which shall be delivered to PME, in which event such opinion shall state that PME is justified in relying on such opinion of Connecticut counsel.

(d) PME shall have received written Federal income tax rulings from the Internal Revenue Service satisfactory to its counsel, substantially to the effect that:

(i) No gain or loss will be recognized to PME upon (A) PME's transfer to the New Corporation of the assets, activities, and stock of wholly-owned subsidiaries relating to the publishing business in consideration of issuance of all of the stock of the New Corporation and its assumption of certain liabilities of PME in a reorganization under Section 368(a)(1)(D) of the U.S. Internal Revenue Code, or (B) PME's distribution of the New Corporation's stock to PME's shareholders.

(ii) The distribution of the stock of the New Corporation to PME's shareholders will qualify as a distribution of stock of a controlled corporation within the meaning of Section 355 of such Code.

(iii) The statutory merger of PME into Grace will constitute a reorganization under Section 368(a)(1)(A) of such Code.

(iv) No gain or loss will be recognized to PME in connection with such statutory merger.

**15. Conditions Precedent to Grace's Obligations at 1973 Closing.** Grace's obligation to issue and deliver Additional Shares at the 1973 Closing 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.

**16. Agreements as to Securities Act and Representations by PME Stockholders.** PME 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 liquidation of the Company or any portion of the 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.

In the event that during the period commencing on the first anniversary date of the Effective Date and ending on the fourth anniversary date thereof Grace files a registration statement under the Act with the SEC on Form S-1 covering shares of Grace Common Stock, Grace will on or prior to the date each such registration statement is filed during such period notify Parr, Doherty, Polk & Sargent, counsel for PME, at their address specified in or pursuant to Section 19 hereof, of such filing or proposed filing. Thereafter, or in the event that a period of 18 months shall have elapsed following the Effective Date and Grace shall not have given the notice referred to in the preceding sentence, any one or more of the PME stockholders may request Grace to file a registration statement pursuant to the Act covering all or any portion of the Grace Common Stock then beneficially owned by the stockholder or stockholders making such request (the "Registering Stockholders") by giving Grace a written notice (the "Stockholders Notice") containing the information and covenants hereinafter specified within twenty days of the giving of Grace's notice referred to in the preceding sentence. In the event that a Stockholders Notice is received as provided above, Grace will:

(1) file a registration statement (the "Registration Statement") pursuant to the Act covering all or such portion of the Grace Common Stock referred to in the Stockholders Notice as promptly as practicable and to file one (1) post-effective amendment to the Registration Statement amending such Registration Statement so that the prospectus related thereto can be used in connection with the sale of the shares covered thereby more than sixteen (16) months after the date of the latest balance sheet contained in such Registration Statement, and will use its best efforts to cause the Registration Statement and any amendments thereto to become effective;

(2) make available to the Registering Stockholders copies of each preliminary prospectus, and, if such registration is effected, each final prospectus and supplement thereto filed in connection with the Registration Statement or any amendments thereto all in such quantities as may be reasonably requested in writing by the Registering Stockholders prior to the printing of any such prospectus or supplement; and

(3) pay all fees and expenses incurred by Grace relating to the Registration Statement and any amendment thereto, including counsel fees, printing expenses and auditors fees.

Grace shall have no obligation to file the Registration Statement unless the aggregate number of shares registration of which is requested in the Stockholders Notice or Notices is at least 20,000 shares of the Grace Common Stock and unless the Stockholders Notice or Notices shall be in form reasonably acceptable to Grace's counsel and shall include the following:

- (1) the complete details of the proposed disposition;
- (2) agreements by the Registering Stockholders that:

(A) If the Registration Statement becomes effective, they will not directly or indirectly offer or sell, pledge, transfer or otherwise dispose of all or any portion of the Grace Common Stock covered thereby, or solicit any offer to buy, purchase or otherwise acquire or to take a pledge of all or any portion of such Grace Common Stock except in conformity with the Act, the rules and regulations of the SEC, the plan of disposition described in the Registration Statement and any amendments thereto and the terms of any undertaking which Grace may make in the Registration Statement or any amendments thereto;

(B) they will cooperate with Grace in the preparation and filing of and provide Grace with all information required in connection with the Registration Statement and any amendments thereto or by the SEC; and

(C) they will pay all fees and expenses incurred by them relating to the Registration Statement and any amendments thereto or to any offer or sale of the Grace Common Stock thereunder, including counsel fees, brokerage fees and transfer taxes; and

(3) confirmation that the Registering Stockholders have taken no action inconsistent with the terms and provisions of the instruments executed by them pursuant to the first paragraph of this § 16.

Notwithstanding the foregoing provisions of this § 16, Grace shall not be obligated to file a registration statement (i) in connection with any offer, sale or disposition of shares of Grace Common Stock in respect of which Grace shall deliver to the shareholder a written opinion of the General Counsel of Grace to the effect that registration of such Stock is not required under the provisions of the Act or a letter from the Division of Corporation Finance of the SEC to the effect that such Division would not recommend any action to the SEC if such offer, sale or other disposition were effected.

Grace shall not be obligated to file more than two (2) Registration Statements nor more than one (1) post-effective amendment to each of such Registration Statements and Grace shall not be obligated to file more than one (1) Registration Statement in any one 18-month period.

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, PME 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.

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

(a) by mutual consent of the Boards of Directors of PME and Grace; or

(b) at the election of the Board of Directors of either PME or Grace if any condition to the obligations of the corporation so terminating this Agreement set forth in § 13 of this Agreement (in the case of termination by Grace) or § 14 of this Agreement (in the case of termination by PME) has not been fulfilled prior to or on the Effective Date.

If the merger contemplated by this Agreement becomes effective under applicable law, Grace shall pay all expenses incurred in connection therewith. If not, PME shall pay all expenses incurred by or on behalf of any Company 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.

If the Effective Date shall not have occurred on or prior to the record date for the determination of holders of Grace Common Stock who are entitled to receive the cash dividend payable on such Stock in June, 1970, either party may, at its option, exercisable by delivery of written notice to the other delivered not later than the close of business on said record date, elect to postpone the termination of this Agreement until August 1, 1970. If Grace shall exercise its option to postpone the termination date, the PME Shares referred to in § 2(h)(ii) above shall be converted into 5,5956 fully paid and non-assessable shares of Grace Common Stock and the maximum number of Additional Shares referred to in § 6 hereof shall be increased to 509,625 shares. If PME shall exercise its option to postpone the termination date, the PME Shares referred to in § 2(h)(ii) above shall be converted into 5,5770 fully paid and non-assessable shares of Grace Common Stock and the maximum number of Additional Shares referred to in § 6 hereof shall be 507,938.

**18. Nature of Statements; Expiration of Representations and Warranties.** 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 PME or Grace pursuant to this Agreement or in connection with the transactions contemplated hereby shall be deemed a representation and warranty hereunder.

**19. 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.  
7 Hanover Square  
New York, N. Y. 10005  
*Attention:* Leo A. Larkin, Secretary

If to PME--

Parents' Magazine Enterprises, Inc.  
52 Vanderbilt Avenue  
New York, New York 10017  
*Attention: George J. Hecht, Chairman*

with a copy to

Parr, Doherty, Polk & Sargent  
80 Broad Street  
New York, N. Y. 10004  
*Attention: F. Van Sicien Parr, Esq.*

Either Grace or PME 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 § 19.

20. **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 New York and Connecticut as applicable. To the extent that this Agreement constitutes a contract between PME 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.

21. **Amendments; Waivers and Consents.** This Agreement may be amended as respects PME and any of the terms, covenants, agreements, representations, warranties or conditions hereof may be waived on behalf of PME, or consents to departures therefrom may be granted on behalf of PME, by an instrument in writing executed by the Chairman, President or any Executive Vice President of PME. This Agreement may be amended as respects Grace and any of the terms, covenants, agreements, representations, warranties or conditions hereof may be waived on behalf of Grace, or consents to departures therefrom may be granted on behalf of Grace, by an instrument in writing executed by the President, any Executive Vice President or any Vice President of Grace.

22. **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.

23. **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 PME 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 PME 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..... C. H. ERLHART  
Executive Vice President

ATTEST:

..... ALBERT A. EUSTIS  
Assistant Secretary

PARENTS' MAGAZINE ENTERPRISES, INC.

[SEAL]

By..... GEORGE J. HECHT  
Chairman

ATTEST:

..... PETER LOWENSTEIN  
Secretary