

Exhibit 1

COVENANT NOT TO SUE

This Covenant Not to Sue ("Covenant") is made by THE ANDY WARHOL FOUNDATION FOR THE VISUAL ARTS, INC., a New York not-for-profit corporation having a principal place of business at 65 Bleecker Street, New York, New York 10012 ("The Foundation"), and is effective as of March 16, 2012 ("Effective Date").

WHEREAS, The Foundation owns all right, title and interest in and to the trademarks and copyrightable non-film works of the artist Andy Warhol; and

WHEREAS, on January 11, 2012, The Velvet Underground ("VU") – a New York partnership with a principal place of business at 270 Madison Avenue, Suite 1410, New York, New York 10016 – filed a complaint against The Foundation in the United States District Court for the Southern District of New York, Civil Action No. 12-CV-000201 (the "Civil Action"); and

WHEREAS, VU filed a First Amended Complaint in the Civil Action on February 17, 2012;

WHEREAS, VU alleges in the First Amended Complaint (at ¶¶ 5 – 6) that, in or about 1966 or 1967, Andy Warhol provided The Velvet Underground band with a drawing of "a banana design and a stylized 'Andy Warhol' signature" (the "Banana Design") for use on the front cover of the band's first L.P., called *The Velvet Underground and Nico*; and

WHEREAS, a copy of the Banana Design, as depicted in Exhibit 1 of VU's First Amended Complaint, appears in Schedule "A" attached to this Covenant; and

WHEREAS, VU's First Amended Complaint contains four causes of action, the first of which seeks a Declaratory Judgment that The Foundation "has no copyright rights in the Banana [D]esign" and that "[t]he use of the Banana [D]esign by VU cannot infringe any copyright rights" in the Banana Design asserted or claimed by The Foundation; and

WHEREAS, The Foundation maintains that the circumstances of its communications and course of dealing with VU do not establish a justiciable controversy between the parties on the issues for which VU seeks declaratory relief; and

WHEREAS, notwithstanding the foregoing, The Foundation executes this Covenant in the interest of avoiding protracted and expensive motion practice relating to the justiciability of Count I of the First Amended Complaint.

NOW, THEREFORE, The Foundation covenants as follows:

COVENANT

The Foundation – on behalf of (i) itself, (ii) its related or affiliated entities, licensees, independent contract manufacturers, sales agents, licensing agents, vendees, assigns, and any persons or entities claiming to be in privity of contract with The Foundation, and (iii) any predecessor, successor, director, officer, employee, agent, distributor, attorney or representative

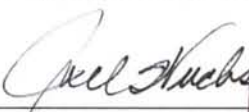
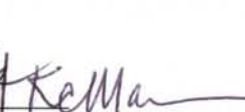
of any of them – hereby unconditionally and irrevocably covenants to refrain from making any claim(s) or demand(s), or from commencing, causing, or permitting to be prosecuted any action in law or equity (collectively, “Claim”), against:

- (a) VU;
- (b) Any of VU’s partners, members or shareholders, including, without limitation, John Cale and Lou Reed;
- (c) Any of parent, subsidiary, division, related or affiliated entity, sales agent, licensing agent, vendee, assign, independent contract manufacturer, distributor, or person or entity claiming to be in privity of contract with VU or any of VU’s partners, members or shareholders (including, without limitation, John Cale and Lou Reed); and
- (d) Any predecessor, successor, officer, director, employee, agent, distributor, independent contract manufacturer, or assign of any of them (whether direct or indirect),

(collectively, “Covered Parties”) for infringement of any statutory or common law copyright in the Banana Design under the current, former, or any future copyright law of the United States – regardless of whether said Claim for copyright infringement accrues before, on, or after the Effective Date and regardless of whether said Claim arises from VU’s or any other Cover Party’s past, current or future conduct. For avoidance of doubt, this Covenant does not extend to any Claim that is based on intellectual property right other than copyright.

Dated: March 16, 2012

THE ANDY WARHOL FOUNDATION FOR THE VISUAL ARTS, INC.

By:		
Name:	Joel Wachs	KC Maurer
Title:	President	CFO and Treasurer

SCHEDULE "A"

