

AIR T INC  
Form 8-K  
March 26, 2012

# SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

## FORM 8-K

### CURRENT REPORT

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) March 26, 2012

## Air T, Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware  
(State or Other Jurisdiction

of Incorporation)

0-11720  
(Commission

File Number)  
3524 Airport Road

Maiden, North Carolina 28650

52-1206400  
(I.R.S. Employer

Identification No.)

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**(Address of Principal Executive Offices)**

**(Zip Code)**

**(828) 464-8741**

**(Registrant's Telephone Number, Including Area Code)**

**Not Applicable**

**(Former name or former address, if changed from last report)**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- ..  Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ..  Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ..  Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ..  Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 1.01 Entry into a Material Definitive Agreement**

On March 26, 2012, in order to protect stockholders from coercive or otherwise unfair takeover tactics, the Board of Directors (the Board) of Air T, Inc. (the Company) declared a dividend of one preferred share purchase right (a Right) for each outstanding share of common stock, par value \$.25 per share (the Common Shares), of the Company. The dividend is payable on April 5, 2012 (the Record Date) to the stockholders of record on that date. Each Right entitles the registered holder to purchase from the Company one one-thousandth of a share of Series A Junior Participating Preferred Stock of the Company, par value \$1.00 per share (the Preferred Shares), at a price of \$25.00 per one one-thousandth of a Preferred Share (the Purchase Price), subject to adjustment. The description and terms of the Rights are set forth in the Rights Agreement, dated March 26, 2012 (the Rights Agreement), between the Company and American Stock Transfer & Trust Company, LLC as Rights Agent (the Rights Agent).

Distribution Date; Exercisability; Expiration

Initially, the Rights will be evidenced by the certificates evidencing Common Shares or book-entries representing uncertificated shares until the earlier (the Distribution Date) of: (i) the close of business on the date that is ten business days after the first date (the Share Acquisition Date) of public announcement that a person (other than the Company, a subsidiary or employee benefit or stock ownership plan of the Company or any of its affiliates or associates or an exempt person (as defined below)), together with its affiliates and associates, has acquired beneficial ownership of 15% or more of the outstanding Common Shares (any such person being hereinafter called an Acquiring Person) or (ii) the close of business on the date specified by the Board following the commencement or first public disclosure of a tender offer or exchange offer by any person (other than the Company, a subsidiary or employee benefit or stock ownership plan of the Company or any of its affiliates or associates), whether such commencement or first public disclosure occurs before or after the date of the Rights Agreement, the consummation of which would result in beneficial ownership by such person of 15% or more of the outstanding Common Shares. An exempt person means each person that beneficially owns as of the date of the Rights Agreement 15% or more of the outstanding Common Shares, except that each such person will be considered an exempt person only if and so long as the Common Shares that are beneficially owned by such person do not exceed the number of shares which are beneficially owned by such person on the date of the Rights Agreement, plus any additional Common Shares representing not more than 1% of the Common Shares then outstanding, and except that a person will cease to be an exempt person immediately at such time as such person ceases to be the beneficial owner of more than 15% of the Common Shares then outstanding.

Until the Distribution Date, the Rights may be transferred with and only with the Common Shares. Until the Distribution Date (or earlier redemption or expiration of the Rights), any certificate or, in the case of uncertificated shares, any initial transaction statement or subsequent period statement evidencing Common Shares of the Company issued upon transfer or new issuance of the Common Shares will contain a notation incorporating the Rights Agreement by reference. Until the Distribution Date (or earlier redemption or expiration of the Rights), the surrender for transfer of any certificates evidencing Common Shares or the registration of transfer of ownership of Common Shares in the share register of the Company will also constitute the transfer of the Rights associated with such certificates.

As soon as practicable following the Distribution Date, separate certificates evidencing the Rights ( Right Certificates ) will be mailed to holders of record of Common Shares as of the close of business on the Distribution Date and such separate Right Certificates alone will evidence the Rights. Rights will be exercisable only after the Distribution Date.

The Preferred Shares issuable upon exercise of the Rights will not be redeemable. If issued, each outstanding Preferred Share will be entitled, in connection with the declaration of a dividend on the Common Shares, to a preferential dividend payment equal to the greater of (i) \$1.00 per share and (ii) an amount equal to 1,000 times the related dividend declared per Common Share. Subject to customary anti-dilution provisions, in the event of liquidation, the holders of Preferred Shares will be entitled to a preferential liquidation payment equal to the greater of (a) \$100 per share and (b) an amount equal to 1,000 times the liquidation payment made per Common Share. Because of the nature of the Preferred Shares dividend, voting and liquidation rights, the value of the one one-thousandth interest in a Preferred Share purchasable upon exercise of a Right should approximate the value of one Common Share.

The Rights will expire on the third anniversary of the Record Date (the Final Expiration Date ) unless earlier redeemed, exchanged or amended by the Company as described below.

#### Flip-in Event

In the event (a Flip-in Event ) that (i) any person becomes an Acquiring Person, (ii) any Acquiring Person or any affiliate or associate of such person merges into or combines with the Company and the Company is the surviving corporation, (iii) any Acquiring Person or any affiliate or associate of such person effects certain other transactions with the Company, or (iv) during such time as there is an Acquiring Person the Company effects certain transactions, in each case as described in the Rights Agreement, then, in each such case, proper provision will be made so that from and after the occurrence of such event, each holder of a Right, other than Rights that are or were owned beneficially by an Acquiring Person or any affiliate or associate of such person (which, from and after the date of a Flip-in Event, will be null and void), will have the right to receive, upon exercise thereof at the then-current exercise price of a Right, that number of Common Shares (or, under certain circumstances, an economically equivalent security of the Company or other assets) that at the time of such Flip-in Event have a market value of two times the exercise price of the Right.

#### Flip-over Event

In the event (a Flip-over Event ) that, at any time after a person has become an Acquiring Person, (i) the Company merges with or into any person and the Company is not the surviving corporation, (ii) any person merges with or into the Company and the Company is the surviving corporation, but all or part of the Common Shares are changed or exchanged for stock or other securities of any other person or cash or any other property, or (iii) 50% or more of the Company's assets or earning power, including securities creating obligations of the Company, are sold, in each case as described in the Rights Agreement, then, and in each such case, proper provision will be made so that each holder of a Right, other than Rights which have become void, will thereafter have the right to receive, upon the exercise thereof at the then-current exercise price of the Right, that number of Common Shares (or, under certain circumstances, an economically equivalent security or securities) of such other person that at the time of such Flip-over Event have a market value of two times the exercise price of the Right.

Exchange Feature

At any time after the earlier of the Share Acquisition Date and the Distribution Date and prior to the acquisition by any person or group of affiliated or associated persons of 50% or more of the outstanding Common Shares, the Company may exchange the Rights (other than any Rights that have become null and void), in whole or in part, at an exchange ratio of one Common Share per Right (subject to adjustment).

Equitable Adjustment

The Purchase Price payable, and the number of Preferred Shares or other securities issuable, upon exercise of the Rights will be subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of, the Preferred Shares, (ii) upon the grant to holders of Preferred Shares of certain rights, options or warrants to subscribe for or purchase the Preferred Shares at a price, or securities convertible into the Preferred Shares with a conversion price, less than the then-current market price of the Preferred Shares, or (iii) upon the distribution to holders of the Preferred Shares of evidences of indebtedness, cash (excluding regular periodic cash dividends), assets, stock (excluding dividends payable in the Preferred Shares) or subscription rights or warrants (other than those referred to above). The number of outstanding Rights and the number of one one-thousandths of the Preferred Shares issuable upon exercise of each Right will be subject to adjustment in the event of a stock dividend on the Common Shares payable in Common Shares or a subdivision, combination or reclassification of Common Shares occurring, in any such case, prior to the Distribution Date.

With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments require an adjustment in the Purchase Price of at least 1%. The Company will not be required to issue fractional Preferred Shares (other than fractions that are integral multiples of one one-thousandth of a Preferred Share, which may, at the option of the Company, be evidenced by depositary receipts) or fractional Common Shares or other securities issuable upon the exercise of Rights. In lieu of issuing such securities, the Company may make a cash payment, as provided in the Rights Agreement.

Redemption Rights

The Company may, at its option, redeem the Rights in whole, but not in part, at a price of \$0.01 per Right, subject to adjustment (the Redemption Price ), at any time prior to the earlier of (i) the close of business on the Share Acquisition Date and (ii) the close of business on the Expiration Date. Immediately upon any redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

Amendment of Rights

Prior to the time at which the Rights cease to be redeemable, the Rights Agreement may be amended by the Company without the approval of any holders of Rights, including amendments that increase or decrease the Purchase Price, that add other events requiring adjustment to the Purchase Price payable and the number of the Preferred Shares or other securities issuable upon the exercise of the Rights or that modify procedures relating to the redemption of the Rights, except that no amendment may be made that decreases the stated Redemption Price to an amount less than \$0.01 per Right.

Certain Anti-Takeover Effects

The Rights will not prevent a takeover of the Company. However, the Rights may cause substantial dilution to a person or group that acquires 15% or more of the outstanding Common Shares. The Rights however, should not interfere with any merger or business combination approved by the Board of the Company.

Miscellaneous

Until a Right is exercised, the holder thereof, as such, will have no rights as a stockholder of the Company, including the right to vote or to receive dividends. The Board will have the exclusive power and authority to administer the Rights Agreement and to exercise all rights and powers specifically granted to the Board or to the Company therein, or as may be necessary or advisable in the administration of the Rights Agreement, including without limitation the right and power to interpret the provisions of the Rights Agreement and to make all determinations deemed necessary or advisable for the administration of the Rights Agreement (including any determination to redeem or not redeem the Rights or to amend or not amend the Rights Agreement).

The Rights Agreement is filed as Exhibit 4.1 to this Current Report on Form 8-K and is incorporated herein by this reference.

**Item 3.03. Material Modification to Rights of Security Holders.**

The information set forth in Items 1.01 and 5.03 is incorporated by reference.

**Item 5.03. Amendment to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

In connection with the adoption of the Rights Agreement, on March 26, 2012, the Company filed a Certificate of Designation of Series A Junior Participating Preferred Stock with the Secretary of State of the State of Delaware. The rights and preferences of the Series A Junior Participating Preferred Stock are described above in Item 1.01 Entry into a Material Definitive Agreement. A copy of the Certificate of Designations of Series A Junior Participating Preferred Stock is filed as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated herein by reference.

On March 26, 2012, the Board adopted a resolution to amend and restate Section 5 of Article IV of the Company's Amended and Restated By-laws which governs the fixing of record dates. As amended, Section 5 of Article VI provides that:

In connection with any meeting of stockholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than 60 nor less than ten days before the date of such meeting. If no record date is fixed by the board of directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

In connection with any action by written consent of the stockholders, the board of directors may fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than ten (or the maximum number permitted by applicable law) days after the date on which the resolution fixing the record date is adopted by the board of directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Company's Secretary, request that the board of directors fix a record date, which notice shall include the text of any proposed resolutions. If no record date has been fixed by the board of directors within ten days of receipt of a valid request by a stockholder, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required pursuant to applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation pursuant to the by-laws; provided, however, that if prior action by the board of directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall in such an event be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

In connection with the declaration of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

The text of the amendment to the Amended and Restated By-laws is filed as Exhibit 3.2 to this Current Report on Form 8-K and is incorporated herein by reference.

**Item 8.01. Other Events.**

On March 26, 2012, the Company issued a press release announcing the adoption of the Rights Agreement. The press release is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

<b>Exhibit</b>	<b>Description</b>
3.1	Certificate of Designations of Series A Junior Participating Preferred Stock, as filed with the Secretary of State of the Delaware on March 26, 2012
3.2	Text of Amendment to the Amended and Restated By-laws of Air T, Inc.
4.1	Rights Agreement, dated as of March 26, 2012, between Air T, Inc. and American Stock Transfer & Trust Company, LLC, as Rights Agent.
99.1	Press Release, dated March 26, 2012, announcing adoption of the Rights Agreement.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Company has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: March 26, 2012

AIR T, INC.

By: /s/ Walter Clark  
Walter Clark, Chairman and Chief Executive Officer

Exhibit Index

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