Risk Factors Comparison 2024-02-16 to 2023-03-01 Form: 10-K

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The risk factors noted in this section, and other factors noted throughout this Annual Report, describe certain risks and uncertainties that could cause our actual results to differ materially from those contained in any forward- looking statement. Risks Related to Our Business Failure to generate sufficient net operating income may adversely affect our liquidity, limit our ability to fund necessary capital expenditures, or adversely affect our ability to pay dividends or distributions ~~. Our ability to fund necessary capital expenditures on our communities depends on, among other things, our ability to generate net operating income in excess of required debt payments. If we are unable to fund capital expenditures on our communities, we may not be able to preserve the competitiveness of our communities, which could adversely affect their net operating income and long- term value~~. Our ability to make payments to our investors depends on our ability to generate net operating income in excess of required debt payments and capital expenditure requirements. Our net operating income and liquidity may be adversely affected by events or conditions beyond our control, including: • the general economic climate, including the impact of international hostilities and unrest; • an inflationary environment in which the costs to operate and maintain our communities increase at a rate greater than our ability to increase rents, which we can only do upon renewal of existing leases or at the inception of new leases; • competition from other apartment communities and other housing options; • local conditions, such as loss of jobs, unemployment rates, recession, or an increase in the supply of apartments, which might adversely affect apartment occupancy or rental rates; • changes in governmental regulations and the related cost of compliance; • changes in tax laws and housing laws, including the enactment of rent control laws or other laws regulating multi- family housing; and • changes in interest rates and the availability of financing **. Our ability to fund necessary capital expenditures on our communities depends on, among other things, our ability to generate net operating income in excess of required debt payments. If we are unable to fund capital expenditures on our communities, we may not be able to preserve the competitiveness of our communities, which could adversely affect their net operating income and long- term value**. Competition could limit our ability to lease apartment homes or increase or maintain rents. Our apartment communities compete for residents with other housing alternatives, including other rental apartments and condominiums, and, to a lesser degree, single- family homes that are available for rent, as well as new and existing condominiums, and single- family homes for sale. Competitive residential housing, as well as household formation and job creation in a particular area, could adversely affect our ability to lease apartment homes and to increase or maintain rental rates . Because real estate investments are relatively...... our financial condition or results of operations . If our acquisitions do not perform as expected, our results of operations could be adversely affected. The selective acquisition of stabilized apartment communities when we have a favorable cost of capital is a component of our strategy. However, we may not be able to complete transactions successfully in the future. We expect that other real estate investors will compete with us for attractive investment opportunities in markets where we focus our acquisition efforts. We may not be in a position or have the opportunity in the future to make suitable property acquisitions on favorable terms. Although we seek to acquire apartment communities when such acquisitions increase our free cash flow internal rates of return and are accretive to net asset value, such transactions may fail to perform in accordance with our expectations. In particular, following acquisition, the value and operational performance of an apartment community may be diminished if obsolescence or neighborhood changes occur before we are able to sell the apartment community. Additionally, occupancy rates and rents at these properties could fail to meet our expectations or we may underestimate the costs necessary to operate an acquired property to the standards established for its intended market position. This could have an adverse effect on our financial condition or results of operations. ~~Potential liability~~ **The Company may experience various increased costs, including increased property taxes. Real property taxes on** ~~or~~ **our properties may increase as our properties are reassessed by tax assessors or as property tax rates change. A California law commonly referred to as Proposition 13 (" Prop 13 ") limits annual real estate tax assessment increases on California properties to 2 % of assessed value while guaranteeing a base tax rate of 1 %. However, under Prop 13, property tax reassessment at market value occurs as a result of a" change in ownership" of a property. Property tax assessors may not immediately recognize a" change in ownership" following a market transaction that has occurred leaving property owners unaware of** ~~other~~ -- **the** ~~expenditures associated with~~ **impact of a** potential ~~environmental contamination may be costly~~ **reassessment for a considerable amount of time following a particular transaction. Therefore, the property taxes we are required to pay could increase substantially from the prior or current years, including on a retroactive basis. Additionally, the base tax rate of 1 % for all taxing authorities guaranteed under Prop 13 does not include additional property tax levies for approved voter indebtedness or non- ad valorem tax increases** . Various **initiatives to repeal or amend Prop 13, to eliminate its application to commercial and residential property, to increase the permitted annual real estate tax increases, and / or to introduce split tax roll legislation could increase the assessed value and / or tax rates applicable to commercial property in California. Further, changes in U. S.** federal ~~,~~ **tax law could cause** state ~~,~~ and local **governments** ~~laws subject apartment community owners or operators~~ to **alter** ~~liability for management, and the costs of removal or remediation, of certain potentially hazardous materials that may be present in the land or buildings of an apartment community. Potentially hazardous materials may include polychlorinated biphenyls, petroleum- based fuels, lead- based paint, or asbestos, among other~~ - **their taxation** ~~materials. Such laws often impose liability without regard to fault or whether the owner or operator knew~~ of **real** ~~, or was responsible for, the presence of such materials. The presence of, or the failure to manage or remediate properly~~ **property** , these materials may adversely affect occupancy...... communities we no longer own or operate . Rent control laws and other regulations that limit our ability to **select residents,** increase rental rates or limit our ability to evict residents to limited circumstances may negatively impact our rental income and profitability. State and local governmental agencies ~~may~~ **continue to** introduce **and enact** rent control laws or other regulations that limit our ability to **select residents,** increase rental rates **,** or limit our ability to evict residents (known as " just cause " evictions), which may affect our rental income. Especially in times of recession and economic slowdown, rent control initiatives can acquire significant political support. If rent controls unexpectedly became applicable to certain of our properties, our revenue from and the value of such properties could be adversely affected ~~- party claims related to our teammate health insurance plans,workers' compensation coverage,and general liability exposure.With respect to our exposure to claims of third parties,we establish reserves at levels that reflect our known and estimated losses.The ultimate cost of losses and the impact of unforeseen events may vary materially from recorded reserves,and variances may adversely affect our operating results and financial condition.We purchase insurance to reduce our exposure to losses and limit our financial losses on large individual risks~~ .Investments through joint ventures introduce governance risks even where the business of the joint venture adds no further business risks.We have in the past and may in the future acquire properties in,or contribute or sell properties to,joint ventures with other persons or entities when we believe circumstances warrant the use of such structures.We may choose to do so to access opportunities,or more often,to source equity capital at a lower cost than our alternatives.These investments involve risks including,but not limited to,the possibility the other partners may have business,economic,or other objectives which are inconsistent with ours.In addition,the other partners may have the ability to take or force action (or withhold consent that may be required to take actions) contrary to our requests.In general,we structure such agreements with our partners so that we have full authority to use our expertise to make operating decisions.Also,our partners might become insolvent or fail to make capital contributions when due,which may require us to contribute additional capital.In such event,the additional capital contributed is most often on favorable terms.In general,we and our partners may each have the right to trigger a buy- sell or other similar arrangement,which could cause us to sell our interest,or acquire our partner' s interest,at a time when we otherwise would not have initiated such a transaction and may result in the valuation of our interest in the joint venture (if we are the seller) or of the other partner' s interest in the joint venture (if we are the buyer) at levels which may not be representative of the valuation that would result from an arm' s length marketing process and could cause us to recognize unanticipated capital gains or losses or the loss of fee income.Each joint venture agreement is individually negotiated and our ability to operate,finance,or dispose of properties and interests in such joint ventures in our sole discretion may be limited to varying degrees depending on the terms of the applicable joint venture agreement.We are also subject to other risks in connection with joint ventures,including (i) a deadlock if we and our partner are unable to agree upon certain major and other decisions (which could result in litigation or disposing of an asset at a time at which we otherwise would not sell the asset),and (ii) limitations on our ability to liquidate our position in the joint venture without the consent of the other partner. ~~Our~~ **Adverse economic and geopolitical conditions,local,regional,national,or international health crises and dislocations in the credit markets could negatively impact our tenants and our operations.Factors that could negatively impact our operations or those of entities in which we hold a partial interest during a pandemic or another health crisis,adverse economic or geopolitical event,or dislocation in the credit market include:• our ability to collect rents and late fees on a timely basis or at all,without reductions or other concessions;• our ability to evict residents for non- payment and for other reasons;• our ability to ensure** business ~~and~~ **continuity in the event our continuity of** operations ~~would suffer in the event of significant~~ **plan is not effective or improperly implemented or deployed during a** ~~disruptions~~ - **disruption;• fluctuations in regional and local economies,local real estate conditions,and rental rates;•** ~~or~~ **our ability** ~~cyberattacks of our information technology systems or our failure~~ to ~~comply~~ **control incremental costs associated** with **such factors;•** ~~laws,rules and regulations related to privacy and data protection.Information technology,communication networks,and related systems are essential to the operation of~~ our **ability** ~~business.We use these systems~~ to **dispose of** ~~manage our resident and vendor relationships,internal communications~~ -- **communities at all** ~~,accounting and record- keeping systems,and many other key aspects of our~~ - **or** ~~business.Our operations rely~~ on ~~the secure~~ **terms favorable to us;and • potential litigation** . Laws benefiting disabled persons may result in our incurrence of unanticipated expenses. Under the Americans with Disabilities Act of 1990 (" ADA "), all places intended to be used by the public are required to meet certain federal requirements related to access and use by disabled persons. The Fair Housing Amendments Act of 1988 (" FHAA ") requires apartment communities first occupied after March 13, 1991, to comply with design and construction requirements for disabled access. For those apartment communities receiving federal funds, the Rehabilitation Act of 1973 also has requirements regarding disabled access. These and other federal, state, and local laws may require structural modifications to our apartment communities or changes in policy / practice or affect renovations of the communities. Noncompliance with these laws could result in the imposition of fines or an award of damages to private litigants and also could result in an order to correct any non- complying feature, which could result in substantial capital expenditures. Although we believe that our apartment communities are substantially in compliance with present requirements, we may incur unanticipated expenses to comply with the ADA, the FHAA, and the Rehabilitation Act of 1973 in connection with the ongoing operation of our apartment communities and the apartment communities we manage. ~~operating and~~ financial results may vary significantly from one period to the next.Although we anticipate and plan for losses,there can be no assurance that our financial results will not be adversely affected by our exposure to losses arising from natural disasters or severe weather in the future that exceed our previous experience and assumptions.We depend on our senior management.Our success and our ability to implement and manage anticipated future growth depend,in large part,upon the efforts of our senior management team,who have extensive market knowledge and relationships,and exercise substantial influence over our operational,financing,acquisition,and disposition activity.Members of our senior management team have national or regional industry reputations that attract business and investment opportunities and assist us in negotiations with lenders, **existing and** Moisture infiltration and resulting mold remediation may be costly. Although we are proactively engaged in managing moisture intrusion and preventing the presence of mold at our apartment communities, it is not unusual for periodic moisture intrusion to cause mold in isolated locations within an apartment community. We have implemented policies, procedures, and training, and include a detailed moisture intrusion and mold assessment during acquisition due diligence. We believe these measures will manage mold exposure at our apartment communities and will minimize the effects that mold may have on our residents. To date, we have not incurred any material costs or liabilities relating to claims of mold exposure or to abate mold conditions. We have only limited insurance coverage for property damage claims arising from the presence of mold and for personal injury claims related to mold exposure. ~~Although~~ **Adverse economic and geopolitical conditions, local, regional, national, or international health crises and dislocations in the credit markets could negatively impact our residents and our operations. Factors that could negatively impact our operations or those of entities in which** we ~~are insured~~ **hold a partial interest during a pandemic or another health crisis, adverse economic or geopolitical event, or dislocation in the credit market include: • our ability to collect rents and late fees on a timely basis or at all, without reductions or other concessions; • our ability to evict residents** for **non- payment and** ~~certain risks, the cost of insurance, increased claims activity, or~~ **for** ~~losses resulting from casualty~~ **other reasons; • our ability to ensure business continuity in the** ~~events~~ - **event** ~~may affect~~ our **continuity** ~~financial condition and results~~ of operations **plan** ~~. We are insured for a portion of our consolidated apartment communities' exposure to casualty losses resulting from fire, earthquake, hurricane, tornado, flood, and other perils, which insurance~~ is **not effective** ~~subject to deductibles and self- insurance retention that exceed expected losses. We recognize casualty losses or gains based on the net book value of the affected apartment community and the amount of any related insurance proceeds. In many instances, the actual cost to repair or replace the apartment community may exceed its net book value and any insurance proceeds. We recognize the uninsured portion of losses as casualty losses in the periods in which they are incurred. In addition, we are self- insured for~~ - **or improperly implemented** ~~a portion of our~~ - **or deployed during a disruption; • fluctuations in regional** ~~exposure to third- party claims related to our teammate health insurance plans, workers' compensation coverage,~~ and **local economies** ~~general liability exposure. With respect to our exposure to claims of third parties~~ , **local real** ~~we establish reserves at levels that reflect our known and estimated~~ --- **estate** ~~losses. The ultimate cost of losses and the impact of unforeseen events may vary materially from recorded reserves, and variances may adversely affect our operating results and financial condition. We purchase insurance to reduce our exposure to losses and limit our financial losses on large individual risks. The availability and cost of insurance are determined by market~~ conditions ~~outside~~ **, and rental rates; •** our **ability to** control **incremental** ~~. Current market conditions are challenging with respect to capacity and price. No assurance can be made that we will be able to obtain and maintain insurance at the same levels and on the same terms as we do today. If we are not able to obtain or maintain insurance in amounts we consider appropriate for our business, or if the cost~~ **costs** ~~of obtaining such insurance increases materially, we may have to retain a larger portion of the potential loss~~ associated with ~~our exposures to risks. Natural disasters and severe weather may affect our financial condition and results of operations. Natural disasters~~ such **factors; •** ~~as earthquakes and severe weather such as hurricanes may result in significant damage to~~ our ~~apartment~~ **ability to dispose of** communities **at all** ~~. The extent of our~~ - **or** ~~casualty losses and loss in operating income in connection with such events is a function of the severity of the event and the total amount of exposure in the affected area. When we have geographic concentration of exposures, a single catastrophe (such as an earthquake) or destructive weather event (such as a hurricane) affecting a region may have a significant adverse effect~~ on **terms favorable to** ~~our financial condition and results of operations. We cannot accurately predict natural disasters or severe weather, or the number and type of such events that will affect~~ us **;** ~~. As a result, our operating~~ and **•** financial results may vary significantly from one...... in negotiations with lenders, existing and potential **litigation** tenants, and other industry participants....... protection could harm our business or reputation . Contracts for redevelopment and development services create risk for non- performance. We do not expect development or redevelopment to be a regular part of our business. Whether the opportunity emerges from covered land or is forced upon us as after an extreme casualty, development and redevelopment by another party acting as our agent shields us from the execution risk, but only to the extent of the expertise and creditworthiness of the other party. If such other qualified party acting as our agent fails to perform under our agreements with it, it could have a material adverse effect on our portfolio, financial condition and results of operations . Investments through joint ventures introduce governance...... to us; and • potential litigation . Our business could be negatively affected as a result of the actions of activist stockholders. Publicly traded companies have increasingly become subject to campaigns by investors advocating corporate actions such as financial restructuring, increased borrowing, special dividends, stock repurchases, or even sales of assets or the entire company. Given our stockholder composition and other factors, it is possible our stockholders or future activist stockholders may attempt to effect such changes. Responding to proxy contests and other actions by such activist stockholders or others would be costly and time- consuming, disrupt our operations and divert the attention of our board of directors and senior management team from the pursuit of business strategies, which could adversely affect our results of operations and financial condition. Additionally, perceived uncertainties as to our future direction as a result of stockholder activism or changes to the composition of the board of directors may lead to the perception of a change in the direction of the business, instability, or lack of continuity, which may be exploited by our competitors, cause concern to our current or potential lenders, partners, or others with whom we do business, and make it more difficult to attract and retain qualified personnel. Risks Related to Our Indebtedness and Financing Increases in interest rates would increase our interest expense and reduce our profitability. As of December 31, ~~2022~~ **2023** , we had approximately $ ~~521~~ **115. 0** million of variable- rate indebtedness outstanding, net of in place floating to fixed rate swaps. After consideration of these swaps, we estimate that a change in the floating rate of 100 **-** basis points with constant credit risk spreads would increase or decrease interest expense by $ ~~5~~ **1** . 2 million on an annual basis. Subsequent to ~~refinancing activity in January 2023, net floating rate indebtedness is now $ 150 million and we estimate that a change in~~ the **year ended** ~~floating rate of 100 basis points with constant credit spreads would increase or decrease interest expense by $ 1. 5 million on an annual basis. As of~~ December 31, ~~2022~~ **2023 , we entered into interest rate swaps economically hedging $ 200 million of our revolving credit facility at 4. 9 %. As of December 31, 2023** , we had $ ~~301~~ **117** . ~~4~~ **5** million in cash and cash equivalents and restricted cash, a portion of which bears interest at variable rates, which may partially mitigate the effect of an increase in variable rates on our variable- rate indebtedness discussed above. Our debt financing could result in foreclosure resulting in a loss of income and value, prevent us from making distributions on our equity, or otherwise adversely affect our liquidity. We have a revolving credit facility **, secured credit facility,** and ~~four~~ **three** tranches of term loans, maturing at various times over the next few years, each of which may be secured by assets of, or guaranteed by, certain subsidiaries of AIR, including the AIR Operating Partnership. Over time, we may become party to one or more additional financing arrangements, including credit facilities or other bank debt, and bonds. In connection with such financing arrangements, we are subject to the risk that: (i) our cash flow from operations will be insufficient to make required payments of principal and interest; (ii) our indebtedness may not be refinanced; or (iii) the terms of any refinancing will not be as favorable as the terms of then- existing indebtedness. If we are unable to make required payments of principal and interest or are unable to refinance at maturity on favorable terms, or at all, the lenders could foreclose on the collateral securing that debt, resulting in the loss to us of income and asset value. We also anticipate that certain of our subsidiaries will maintain a certain amount of secured property- level indebtedness. If we fail to make required payments of principal and interest on our mortgage debt, our lenders could foreclose on the apartment communities and other collateral securing such debt, resulting in the loss to us of income and asset value. Our organizational documents do not limit the amount of debt that we may incur. Payments of principal and interest may leave us with insufficient cash resources to operate our communities or pay distributions required to maintain AIR' s qualification as a REIT. Disruptions in the financial markets could affect our ability to obtain financing and the cost of available financing and could adversely affect our liquidity. Our ability to obtain financing and the cost of such financing depends on the overall condition of the United States credit markets. During periods of economic uncertainty, the United States credit markets may experience significant liquidity disruptions, which may cause the spreads on debt financings to widen considerably and make obtaining financing, both non- recourse property debt and corporate borrowings such as those under a credit facility, more difficult. In particular, apartment borrowers have benefited from the historic willingness of the Federal National Mortgage Association (" Fannie Mae "), and the Federal Home Loan Mortgage Corporation (" Freddie Mac "), to make substantial amounts of loans secured by multi- family properties, even in times of economic distress. These two lenders are federally chartered and subject to federal regulation, which is subject to change, making uncertain their prospects and ability to provide liquidity in a future downturn. If our ability to obtain financing is adversely affected, we may be unable to satisfy scheduled maturities on existing financing through other sources of liquidity, which could result in lender foreclosure, resulting in loss of income and asset value, both of which would adversely affect our liquidity .Because real estate investments are relatively illiquid,we may not be able to sell apartment communities when appropriate.Real estate investments are relatively illiquid and generally cannot be sold quickly.REIT tax rules may also restrict our ability to sell apartment communities.Thus,we may not be able to change our portfolio promptly in response to changes in economic or other market conditions.Our ability to dispose of apartment communities in the future will depend on prevailing economic and market conditions,including the cost and availability of financing.This could have a material adverse effect on our financial condition or results of operations . Failure to hedge effectively against interest rate changes may adversely affect our results of operations. From time to time, we may enter into interest rate hedge agreements to manage some of our exposure to interest rate volatility. Interest rate hedge agreements involve risks, such as the risk that counterparties may fail to honor their obligations under these arrangements. In addition, these arrangements may not be effective in reducing our exposure to changes in interest rates. These risk factors may lead to failure to hedge effectively against changes in interest rates and therefore could adversely affect our results of operations. Covenant restrictions may limit our operations and impact our ability to make payments to our investors. Some of our existing or future debt and other securities may contain covenants that restrict our operations and impact our ability to make distributions or other payments to our investors unless certain financial tests or other criteria are satisfied. AIR Operating Partnership' s outstanding preferred units prohibits the payment of dividends on AIR Common Stock or AIR Operating Partnership Common Units if we fail to pay the dividends to which the holders of the preferred units are entitled. In addition, our debt agreements contain other customary affirmative and negative covenants. We may increase leverage, which could further exacerbate the risks associated with our indebtedness. We may decide to increase our leverage. Our board of directors will consider a number of factors when evaluating our level of indebtedness and when making decisions regarding the incurrence of new indebtedness, including the estimated market value of our assets and the ability of particular assets, and our company as a whole, to generate cash flow to cover the expected debt service. Although our credit facilities and unsecured notes payable may limit our ability to incur additional indebtedness, our governing documents do not limit the amount of debt we may incur, and our board of directors may change our target debt levels at any time without the approval of our stockholders. We may incur additional indebtedness from time to time in the future to finance working capital, capital expenditures, investments or acquisitions, or for other purposes. If we do so, the risks related to our indebtedness could intensify. Risks Related to Tax Laws and Regulations AIR may fail to qualify as a REIT. If AIR fails to qualify as a REIT, AIR will not be allowed a deduction for dividends paid to its stockholders in computing its taxable income and will be subject to United States federal income tax at regular corporate rates. This would substantially reduce our funds available for distribution to our investors. Unless entitled to relief under certain provisions of the Code, AIR also would be disqualified from taxation as a REIT for the four taxable years following the year during which it ceased to qualify as a REIT. In addition, AIR' s failure to qualify as a REIT may place us in default under our credit facilities. We believe that AIR will operate in a manner that enables it to meet the requirements for qualification and taxation as a REIT. However, qualification as a REIT involves the application of highly technical and complex Code provisions for which only limited judicial and administrative authorities exist. Moreover, even a technical or inadvertent mistake could jeopardize our REIT status. AIR' s qualification as a REIT will depend on its satisfaction of certain asset, income, investment, organizational, distribution, stockholder ownership, and other requirements on a continuing basis. AIR' s ability to satisfy the asset tests will depend upon our analysis of the fair market values of our assets, some of which are not susceptible to a precise determination, and for which we do not obtain independent appraisals. AIR' s compliance with the REIT annual income and quarterly asset requirements will also depend upon our ability to manage successfully the composition of our income and assets on an ongoing basis. Moreover, the proper classification of an instrument as debt or equity for U. S. federal income tax purposes may be uncertain in some circumstances, which could affect the application of the REIT qualification requirements. Accordingly, there can be no assurance that the IRS will not contend that our interests in subsidiaries or other issuers constitutes a violation of the REIT requirements. Moreover, future economic, market, legal, tax, or other considerations may cause AIR to fail to qualify as a REIT, or the board of directors of AIR may determine to revoke its REIT status. REIT distribution requirements limit our available cash. As a REIT, AIR is subject to annual distribution requirements. AIR Operating Partnership will pay distributions intended to enable AIR to satisfy its distribution requirements. This will limit the amount of cash available for other business purposes, including amounts to fund our growth. AIR will generally be required to distribute annually at least 90 % of its " real estate investment trust taxable income, " which is generally equivalent to net taxable ordinary income, determined without regard to the dividends paid deduction and excluding any net capital gain, in order for its distributed earnings not to be subject to United States federal corporate income tax. We intend to make distributions to AIR' s stockholders to comply with the requirements applicable to REITs under the Code (which may be all cash or a combination of cash and stock satisfying the requirements of applicable law). However, differences in timing between the recognition of taxable income and the actual receipt of cash could require us to sell apartment communities or borrow funds on a short- term or long- term basis to meet the 90 % distribution requirement of the Code. AIR may be subject to federal, state, and local income taxes in certain circumstances. Even as a REIT, AIR may be subject to United States federal income and excise taxes in various situations, such as on its undistributed income. AIR could also be required to pay a 100 % tax on any net income on non- arm' s- length transactions between AIR and a TRS and on any net income from sales of apartment communities that were held for sale primarily in the ordinary course of business. State and local tax laws may not conform to the United States federal income tax treatment, and AIR may be subject to state or local taxation in various state or local jurisdictions in which AIR transacts business. Any taxes imposed on AIR would reduce our operating cash flow and net income and could negatively impact our ability to pay dividends and distributions. Complying with the REIT requirements may cause AIR to forgo otherwise attractive business opportunities. To qualify as a REIT, AIR will need to continually satisfy tests concerning, among other things, the sources of its income, the nature and diversification of its assets, the amounts distributed to AIR stockholders, and the ownership of AIR stock. As a result of these tests, AIR may be required to make distributions to stockholders at disadvantageous times or when AIR does not have funds readily available for distribution, forgo otherwise attractive investment opportunities, liquidate assets in adverse market conditions, or contribute assets to a TRS that is subject to regular corporate federal income tax. The tax on prohibited transactions could limit our ability to engage in certain transactions which would be treated as prohibited transactions for U. S. federal income tax purposes. Net income that we derive from a prohibited transaction is subject to a 100 % tax. The term " prohibited transaction " generally includes a sale or other disposition of property that is held primarily for sale to customers in the ordinary course of our trade or business. We might be subject to this tax if we were to dispose of our property in a manner that was treated as a prohibited transaction for U. S. federal income tax purposes. We have conducted, and intend to continue to conduct, our operations so that no asset that we own (or that we treat as being owned) will be treated as, or as having been, held for sale to customers, and that a sale of any such asset will not be treated as having been in the ordinary course of our business. As a result, we may choose not to engage in certain sales at the REIT level, even though the sales might otherwise be beneficial to us. In addition, whether property is held " primarily for sale to customers in the ordinary course of a trade or business " depends on the particular facts and circumstances. No assurance can be given that any property that we sell will not be treated as property held for sale to customers, or that we can comply with certain safe harbor provisions of the Code that would prevent such treatment. The 100 % prohibited transaction tax does not apply to gains from the sale of property that is held through a TRS or other taxable corporation, although such income will be subject to tax in the hands of the corporation at regular corporate rates. We intend to structure our activities to prevent prohibited transaction characterization. Changes to United States federal income tax laws could materially and adversely affect AIR and AIR' s stockholders. The present United States federal income tax treatment of REITs may be modified, possibly with retroactive effect, by legislative, judicial, or administrative action at any time, which could affect the United States federal income tax treatment of an investment in AIR Common Stock. The United States federal income tax rules dealing with REITs are constantly under review by persons involved in the legislative process, the IRS, and the United States Treasury Department, which results in statutory changes as well as frequent revisions to regulations and interpretations. We cannot predict how changes in the tax laws might affect AIR and AIR' s stockholders. Revisions in federal tax laws and interpretations thereof could significantly and negatively affect AIR' s ability to qualify as a REIT and the tax considerations relevant to an investment in AIR Common Stock, or could cause AIR to change its investments and commitments. Risks Related to AIR Common Stock We cannot guarantee the timing, amount, or payment of dividends on AIR Common Stock. We are required to distribute annually to holders of AIR Common Stock at least 90 % of our " real estate investment trust taxable income, " which is generally equivalent to net taxable ordinary income (and may be all cash or a combination of cash and stock satisfying the requirements of applicable law). Our board of directors will determine the amount of, and declare, our dividends. Our board of directors' decisions regarding the payment of dividends will depend on many factors, such as REIT distribution requirements, current market conditions, liquidity needs, other uses of cash, such as for deleveraging and accretive investment activities, and other factors that it deems relevant. Our ability to pay dividends will depend on our ongoing ability to generate cash from operations and access the capital markets. We cannot guarantee that we will pay a dividend in the future. Although unlikely to do so, we may choose to pay dividends in our own stock, in which case stockholders could be required to pay income taxes in excess of the cash dividends they receive. Although we have no plans to do so, we may choose to pay dividends in our own stock. If we do effect taxable dividends that are payable in cash or shares of AIR Common Stock, the current tax law allows up to only 20 % of such dividend to be paid in cash. Taxable stockholders receiving such dividends are required to include the full amount of the dividend as ordinary income to the extent of our current and accumulated earnings and profits for U. S. federal income tax purposes. As a result, stockholders may be required to pay income taxes with respect to such dividends in excess of the cash dividends received. If a U. S. Holder sells the stock that it receives as a dividend in order to pay this tax, the sale proceeds may be less than the amount included in income with respect to the dividend, depending on the market price of our stock at the time of the sale. Furthermore, with respect to certain Non- U. S. Holders, we may be required to withhold U. S. tax with respect to such dividends, including in respect of all or a portion of such dividend that is payable in stock. In addition, if a significant number of our stockholders determine to sell shares of AIR Common Stock to pay taxes owed on dividends, it may put downward pressure on the trading price of AIR Common Stock. It is unclear whether and to what extent we will be able to pay taxable dividends in cash and stock in future years. Moreover, the IRS may impose additional requirements with respect to taxable cash / stock dividends, including on a retroactive basis, or assert that the requirements for such taxable cash / stock dividends have not been met. Risks Related to AIR' s Corporate Structure AIR and its subsidiaries may be prohibited from making distributions and other payments. All of AIR' s apartment communities are owned by subsidiaries of AIR Operating Partnership, and all of AIR' s operations are conducted by subsidiaries of AIR. As a result, AIR depends on distributions and other payments from AIR Operating Partnership, and AIR Operating Partnership depends on distributions and payments from its subsidiaries in order to satisfy our financial obligations and make payments to our investors. The ability of AIR Operating Partnership and its subsidiaries to make such distributions and other payments depends on their earnings and cash flows and may be subject to statutory or contractual limitations. As an equity investor in the REIT subsidiaries, AIR Operating Partnership and its subsidiaries, our right to receive assets upon their liquidation or reorganization are effectively subordinated to the claims of their creditors and any holders of preferred equity senior to our equity investments. To the extent that we are recognized as a creditor of such subsidiaries, our claims may still be subordinate to any security interest in or other lien on their assets and to any of their debt or other obligations that are senior to our claims. Limits on ownership of shares specified in AIR' s charter may result in the loss of economic and voting rights by purchasers that violate those limits. AIR' s charter provides for restrictions on ownership and transfer of AIR' s shares of capital stock, including certain restrictions that, subject to certain exceptions, will prevent any person from beneficially or constructively owning more than (i) 8. 7 % (or 15 % in the case of certain pension trusts, registered investment companies, and the initial holder, Terry Considine), by value or number of shares, whichever is more restrictive, of the outstanding shares of AIR Common Stock, or (ii) 8. 7 % (or 15 % in the case of certain pension trusts, registered investment companies, and the initial holder, Terry Considine) in aggregate value of the outstanding shares of all classes and series of AIR capital stock, including AIR Common Stock and any AIR Class A Preferred Stock, (" Preferred Stock "). The charter also prohibits anyone from buying shares of AIR' s capital stock if the purchase would result in AIR losing its REIT status. This could happen if a transaction results in five or fewer individuals (applying certain attribution rules of the Code) owning 50 % or more of the value of all of AIR' s shares of capital stock or in fewer than 100 persons owning all of AIR' s shares of capital stock. In addition to the ownership limits described above, AIR' s charter prohibits any person from (i) beneficially or constructively owning shares of our capital stock that would result in our being " closely held " under section 856 (h) of the Code, (ii) transferring shares of our capital stock if such transfer would result in shares of our capital stock being beneficially owned by fewer than 100 persons (determined without reference to any rules of attribution), (iii) beneficially or constructively owning shares of our stock to the extent such beneficial or constructive ownership in a tenant of AIR' s real property that is described in Section 856 (d) (2) (B) of the Code if the income derived by AIR from such tenant would cause AIR to fail to satisfy any of the gross income requirements of Section 856 (c) of the Code, (iv) beneficially or constructively owning shares of our capital stock if such ownership would result in our failing to qualify as a REIT, and (v) beneficially or constructively owning shares of stock to the extent such beneficial ownership of stock would result in us failing to qualify as a " domestically controlled qualified investment entity " within the meaning of section 897 (h) of the Code. If anyone acquires shares in excess of the ownership limits or in violation of the ownership requirements of the Code for REITs or the transfer restrictions in AIR' s charter: • the transfer will be considered null and void; • we will not reflect the transaction on AIR' s books; • we may institute legal action to enjoin the transaction; • we may demand repayment of any dividends received by the affected person on those shares; • we may redeem the shares; • the affected person will not have any voting rights for those shares; and • the shares (and all voting and dividend rights of the shares) will be held in trust for the benefit of one or more charitable organizations designated by AIR. AIR may purchase the shares of capital stock held in trust at a price equal to the lesser of the price paid by the transferee of the shares or the then current market price. If the trust transfers any of the shares of capital stock, the affected person will receive the lesser of the price paid for the shares or the then current market price. An individual who acquires shares of capital stock that violate the above rules bears the risk that the individual: • may lose control over the power to dispose of such shares; • may not recognize profit from the sale of such shares if the market price of the shares increases; • may be required to recognize a loss from the sale of such shares if the market price decreases; and • may be required to repay to us any dividends received from us as a result of his or her ownership of the shares. AIR' s charter may limit the ability of a third- party to acquire control of AIR. The 8. 7 % and other ownership limits discussed above may have the effect of delaying or precluding acquisition by a third- party of control of AIR without the consent of AIR' s Board of Directors. AIR' s charter authorizes its Board of Directors to issue up to 1, 022, 175, 000 shares of capital stock, consisting of 1, 021, 175, 000 shares of Common Stock and 1, 000, 000 shares of Preferred Stock. As of December 31, ~~2022~~ **2023** , ~~149~~ **144** , ~~086~~ **925** , ~~548~~ **604** shares of Common Stock and 20 shares of Preferred Stock were outstanding. Under AIR' s charter, its Board of Directors has the authority to classify and reclassify any of AIR' s unissued shares of capital stock into shares of capital stock by setting or changing in any one or more respects the preferences, conversion or other rights, voting power restrictions, limitations as to dividends, qualifications, or terms or conditions of redemptions as the AIR Board of Directors may determine. The authorization and issuance of a new class of capital stock could have the effect of delaying or preventing someone from taking control of AIR, where there is a difference of opinion between the AIR Board of Directors and others as to what is in AIR' s stockholders' best interests. The Maryland General Corporation Law may limit the ability of a third- party to acquire control of AIR. As a Maryland corporation, AIR is subject to various Maryland laws that may have the effect of discouraging offers to acquire AIR and increasing the difficulty of consummating any such offers, where there is a difference of opinion between the AIR board of directors and others as to what is in AIR' s stockholders' best interests. The Maryland General Corporation Law, specifically the Maryland Business Combination Act, restricts mergers and other business combination transactions between AIR and any person who acquires, directly or indirectly, beneficial ownership of shares of AIR' s stock representing 10 % or more of the voting power without prior approval of the board of directors of AIR. Any such business combination transaction could not be completed until five years after the person acquired such voting power, and generally only with the approval of stockholders representing 80 % of all votes entitled to be cast and 66- 2 / 3 % of the votes entitled to be cast, excluding the interested stockholder, or upon payment of a fair price. The Maryland General Corporation Law, specifically the Maryland Control Share Acquisition Act, provides generally that a person who acquires shares of AIR' s capital stock representing 10 % or more of the voting power in electing directors will have no voting rights unless approved by a vote of two- thirds of the shares eligible to vote. Additionally, the Maryland General Corporation Law provides, among other things, that the board of directors of AIR will have broad discretion in adopting stockholders' rights plans and has the sole power to fix the record date, time, and place for special meetings of the stockholders. To date, AIR has not adopted a stockholders' rights plan. In addition, the Maryland General Corporation Law provides that a corporation that (x) has at least three directors who are not officers or teammates of the entity or related to an acquiring person and (y) has a class of equity securities registered under the Exchange Act, may elect in its charter or bylaws or by resolution of the board of directors to be subject to all or part of a special subtitle that provides that: (i) the corporation will have a staggered board of directors (known as " board classification "); (ii) any director may be removed only for cause and by the vote of two- thirds of the votes entitled to be cast in the election of directors generally, even if a lesser proportion is provided in the charter or bylaws; (iii) the number of directors may only be set by the board of directors, even if the procedure is contrary to the charter or bylaws; (iv) vacancies may only be filled by the remaining directors, even if the procedure is contrary to the charter or bylaws; and (v) the secretary of the corporation may call a special meeting of stockholders at the request of stockholders only on the written request of the stockholders entitled to cast at least a majority of all the votes entitled to be cast at the meeting, even if the procedure is contrary to the charter or bylaws. AIR has opted out of the provisions of the Maryland General Corporation Law that allow for board classification without stockholder approval.