

Edgar Filing: NN INC - Form 8-K

NN INC  
Form 8-K  
December 18, 2008

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UNITED STATES  
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): December 13, 2008

**NN, Inc.**

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(Exact name of registrant as specified in its charter)

<b>Delaware</b> (State or other jurisdiction of incorporation)	<b>0-23486</b> (Commission File Number)	<b>62-1096725</b> (IRS Employer Identification No.)
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**2000 Waters Edge Drive**  
**Johnson City, Tennessee 37604**  
(Address of principal executive offices) (Zip Code)

**Registrant's telephone number, including area code: (423) 743-9151**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the obligation of the registrant under any of the following provisions:

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

**ITEM 1.01 ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.**

On December 16, 2008, NN, Inc. (the "Company") entered into a Rights Agreement dated as of December 16, 2008 (the "Rights Agreement") between the Company and Computershare Trust Company, N.A., as Rights Agent. The following summary of the principal terms of the Rights Agreement is a general description only and is subject to the detailed terms and conditions of the Rights Agreement. The Rights Agreement is attached as Exhibit 4.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Issuance of Rights for Outstanding Common Shares

Pursuant to the Rights Agreement, the Board of Directors of the Company (the "Board") declared a dividend distribution of one preferred share purchase right (a "Right") for each outstanding share of common stock, \$0.01 par value, of the Company (the "Common Shares"). The dividend is payable on December 15, 2008 (the "Record Date") to the stockholders of record as of the close of business on that date. Each Right entitles the registered holder to purchase from the Company one one-hundredth of a share of Series A Junior Participating Preferred Stock, \$0.01 par value, of the Company (the "Preferred Shares") at a purchase price of \$14.00 (the "Purchase Price"), subject to adjustment.

Rights Evidenced by Common Share Certificates

The Rights will not be exercisable until the Distribution Date (defined below). Until the Distribution Date, certificates for the Rights ("Right Certificates") will not be sent to stockholders and the Rights will attach to and trade together with the Common Shares. Accordingly, Common Share certificates outstanding on the Record Date will evidence the Rights related thereto, and Common Share certificates issued after the Record Date will contain a notation incorporating the Rights Agreement by reference. Until the Distribution Date (or earlier redemption or expiration of the Rights), the surrender or transfer of any certificates for Common Shares outstanding as of the Record Date will also constitute the transfer of the Rights associated with the Common Shares represented by such certificate.

Distribution Date

The Rights will separate from the Common Shares, Right Certificates will be issued, and the Rights will become exercisable upon the earlier of: (i) the close of business on the tenth (10th) business day (or such later date as may be determined by action of the Board prior to such time as any person becomes an Acquiring Person) following a public announcement that a person or group of affiliated or associated persons (an "Acquiring Person") has acquired beneficial ownership of 15% or more of the outstanding Common Shares or (ii) the close of business on the tenth (10th) business day (or such later date as may be determined by action of the Board prior to such time as any person becomes an Acquiring Person) following the commencement of, or announcement of an intention to make, a tender offer or exchange offer the consummation of which would result in such person becoming an Acquiring Person (the earlier of such dates being called the "Distribution Date").

Issuance of Rights Certificates; Expiration of Rights

As soon as practicable following the Distribution Date, separate Right

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Certificates will be mailed to holders of record of the Common Shares as of the close of business on the Distribution Date and such separate Right Certificates alone will evidence the Rights from and after the Distribution Date. The Rights will expire on the earliest of (i) the close of business on December 16, 2011 (the "Final Expiration Date"), or (ii) redemption or exchange of the Rights as described below.

### Initial Exercise of the Rights

Following the Distribution Date, and until one of the further events described below, holders of the Rights will be entitled to receive, upon exercise and the payment of the Purchase Price, one one-hundredth share of the Preferred Shares. In the event that the Company does not have sufficient Preferred Shares available for all Rights to be

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exercised, or the Board decides that such action is necessary and not contrary to the interests of Rights holders, the Company may instead substitute cash, assets or other securities for the Preferred Shares for which the Rights would have been exercisable under this provision or as described below.

### Right to Buy Company Common Shares

Unless the Rights are earlier redeemed, in the event that an Acquiring Person becomes the beneficial owner of 15% or more of the Common Shares then outstanding, then proper provision will be made so that each holder of a Right which has not previously been exercised (other than Rights beneficially owned by the Acquiring Person, which will thereafter be void) will thereafter have the right to receive, upon exercise, Common Shares having a value equal to two times the Purchase Price.

### Right to Buy Acquiring Company Stock

Similarly, unless the Rights are earlier redeemed, in the event that, after the earlier of the date of (i) public announcement by the Company or an Acquiring Person that an Acquiring Person has become such or (ii) the public disclosure of facts by the Company or an Acquiring Person indicating that an Acquiring Person has become such, (x) the Company is acquired in a merger or other business combination transaction, or (y) 50% or more of the Company's consolidated assets or earning power are sold (other than in transactions in the ordinary course of business), proper provision must be made so that each holder of a Right which has not previously been exercised (other than Rights beneficially owned by the Acquiring Person, which will thereafter be void) will thereafter have the right to receive, upon exercise, shares of common stock of the acquiring company having a value equal to two times the Purchase Price.

### Exchange Provision

At any time after the acquisition by an Acquiring Person of 15% or more of the outstanding Common Shares and prior to the acquisition by such Acquiring Person of a majority or more of the outstanding Common Shares, the Board may exchange the Rights (other than Rights owned by the Acquiring Person), in whole or in part, at an exchange ratio of one Common Share per Right (subject to adjustment).

### Redemption

At any time prior to the time any person becomes an Acquiring Person, the Board may redeem the Rights in whole, but not in part, at a price of \$0.001 per Right (the "Redemption Price"). The redemption of the Rights may be made effective at such time, on such basis and with such conditions as the Board in its sole

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discretion may establish. 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.

### Adjustments to Prevent Dilution

The Purchase Price payable, the number of Rights, and the number of Preferred Shares or Common Shares or other securities or property issuable upon exercise of the Rights are subject to adjustment from time to time in connection with the dilutive issuances by the Company as set forth in the Rights Agreement. With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments require an adjustment of at least 1% in such Purchase Price.

### Cash Paid Instead of Issuing Fractional Shares

No fractional portion less than integral multiples of one one-hundredth of a share of Preferred Shares will be issued upon exercise of a Right and in lieu thereof, an adjustment in cash will be made based on the market price of the Preferred Shares on the last trading date prior to the date of exercise.

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### No Stockholders' Rights Prior to Exercise

Until a Right is exercised, the holder thereof, as such, will have no rights as a stockholder of the Company (other than any rights resulting from such holder's ownership of Common Shares), including, without limitation, the right to vote or to receive dividends.

### Amendment of Rights Agreement

The terms of the Rights may be amended by the Board without the consent of the holders of the Rights, except that from and after such time as any person becomes an Acquiring Person no such amendment may adversely affect the interests of the holders of the Rights (other than the Acquiring Person and its Affiliates and Associates).

### Rights and Preferences of the Preferred Shares

Preferred Shares purchasable upon exercise of the Rights will not be redeemable. Each Preferred Share will be entitled to a quarterly dividend payment of 100 times the dividend declared per Common Share. In the event of liquidation, the holders of the Preferred Shares will be entitled to an aggregate payment of 100 times the aggregate payment made per Common Share. Each Preferred Share will have 100 votes, voting together with the Common Shares. In the event of any merger, consolidation or other transaction in which Common Shares are exchanged, each Preferred Share will be entitled to receive 100 times the amount received per common Share. These rights are protected by customary anti-dilution provisions.

Because of the nature of the dividend, liquidation and voting rights of the shares of the Preferred Shares, the value of the one one-hundredth interest in a Preferred Share purchasable upon exercise of each Right should approximate the value of one Common Share.

### Certain Anti-takeover Effects

The Rights approved by the Board are designed to protect and maximize the value of the outstanding equity interests in the Company in the event of an unsolicited attempt by an acquiror to take over the Company, in a manner or on terms not approved by the Board. Takeover attempts frequently include coercive

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tactics to deprive the Company's Board and its stockholders of any real opportunity to determine the destiny of the Company. The Rights have been declared by the Board in order to deter such tactics, including a gradual accumulation of shares in the open market of a 15% or greater position to be followed by a merger or a partial or two-tier tender offer that does not treat all stockholders equally. These tactics unfairly pressure stockholders, squeeze them out of their investment without giving them any real choice and deprive them of the full value of their shares.

The Rights are not intended to prevent a takeover of the Company and will not do so. The Rights may be redeemed by the Company at \$.001 per Right at any time on or prior to the public announcement of the accumulation of 15% or more of the Common Shares by a single acquiror or group. Accordingly, the Rights should not interfere with any merger or business combination approved by the Board.

Issuance of the Rights does not in any way weaken the financial strength of the Company or interfere with its business plans. The issuance of the Rights themselves has no dilutive effect, will not affect reported earnings per share, should not be taxable to the Company or to its stockholders, and will not change the way in which the Common Shares are presently traded. The Board believes that the Rights represent a sound and reasonable means of addressing the complex issues of corporate policy created by the current takeover environment.

However, the Rights may have the effect of rendering more difficult or discouraging an acquisition of the Company deemed undesirable by the Board. The Rights may cause substantial dilution to a person or group that attempts to acquire the Company on terms or in a manner not approved by the Board, except pursuant to an offer conditioned upon the negation, purchase or redemption of the Rights.

### **ITEM 3.03 MATERIAL MODIFICATIONS TO RIGHTS OF SECURITY HOLDERS.**

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

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### **ITEM 5.03 AMENDMENTS TO ARTICLES OF INCORPORATION OR BYLAWS; CHANGE IN FISCAL YEAR.**

#### Certificate of Designation

In connection with the adoption of the Rights Agreement referenced in Item 1.01 above, the Company filed a Certificate of Designation of Series A Junior Participating Preferred Stock with the Secretary of the State of Delaware on December 15, 2008. See the description in Item 1.01 (also incorporated by reference in Item 3.03) of this Current Report on Form 8-K for a more complete description of the rights and preferences of the Series A Junior Participating Preferred Stock. The Certificate of Designation is attached as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated herein by reference.

#### By-Law Amendments

On December 13, 2008, the Board approved amendments to the Company's Restated By-Laws (the "By-Laws"), effective immediately. The amendments revise Article II of the Company's By-Laws. The principal features of the amendments are as follows:

Section (2) Notice of Annual Meeting. This amendment revises the existing by-law provision by limiting the business that may be transacted at an annual stockholders' meeting to only such business that is (a) specified in the notice of the annual meeting given by the Board, (b) otherwise properly brought before the annual meeting by the

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Board, or (c) otherwise properly brought before the annual meeting by a stockholder of record on the date of giving the notice and on the record date for the determination of stockholders entitled to vote at such meeting and who complies with the newly proposed advance notice by-law summarized in Section (13) of the By-Laws below.

Section (12) Action by Written Consent of Stockholders. This amendment revises the existing by-law provision by requiring stockholders who wish to act by written consent to request that the Board set a record date for that action.

Section (13) Stockholder Proposals and Nominations. This amendment is a new provision that requires a stockholder who wishes to bring any item of business or any nomination of a director before an annual stockholders' meeting to notify the Company not earlier than 120 days and not less than 90 days prior to the first anniversary of the preceding year's annual meeting. Whether in regard to a nominee for election to the Board or other business, the notice must include the stockholder's name and address, certain beneficial ownership information, any voting arrangements of which the stockholder is a part, any information relating to the stockholder that would be required to be disclosed in a proxy statement required to be made in connection with solicitations of proxies for election of directors in a contested election under federal securities laws, and any other information reasonably requested by the Company.

If the notice relates to any business other than a nomination of a director, the notice must set forth a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting, any material interest of the stockholder in such business, and a description of all arrangements between the stockholder and any other person in connection with the proposal of such business by the stockholder.

If the stockholder proposes to nominate a person for election or reelection to the Board, the notice must include (a) all information that would be required to be disclosed in a proxy statement required to be made in connection with solicitations of proxies for election of directors in a contested election under federal securities laws, including such person's written consent to be named in the proxy statement as a nominee and to serve as a director if elected, and (b) a description of all material monetary arrangements during the past three years between the stockholder and the proposed nominee. Lastly, the notice must set forth a representation that the stockholder intends to vote his/her stock at the meeting to nominate the person or propose the business specified in the notice.

The amendment also includes a provision that addresses a situation where the number of directors to be elected to the Board is increased and there is no public announcement by the Company naming all of the

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nominees for director or specifying the size of the increased Board at least 100 days prior to the first anniversary of the preceding year's annual meeting. Under this scenario, a stockholder's notice will still be considered timely, but only with respect to nominees for any new positions created by such increase in the size of the Board, if it is delivered to the Company no later than the 10th day following the day on which the public announcement naming all nominees or specifying the size of the increased Board is first made by the Company.

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Section (14) Compliance Determinations for Director Nominations and Stockholder Proposals. This amendment is a new provision that expressly requires director nominations and stockholder proposals to be made in compliance with the procedures set forth in the By-Laws. The amendment also gives the Chairman of a stockholders' meeting the power and duty to determine whether a director nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in compliance with the procedures set forth in the By-Laws, and to disregard any proposed director nomination or business that is not in compliance with the By-Laws.

**ITEM 8.01 OTHER EVENTS.**

On December 16, 2008, the Company issued a press release describing the dividend distribution and the Rights. A copy of the press release is included herein as Exhibit 99.1, which is incorporated herein by reference.

**ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS.**

(d) Exhibits

<u>Exhibit Number</u>	<u>Description of Exhibit</u>
3.1	Form of Certificate of Designation of Series A Junior Participating Preferred Stock of NN, Inc., as filed with the Secretary of the State of Delaware on December 15, 2008.
3.2	Amendments to the Restated By-Laws of NN, Inc.
4.1	Rights Agreement, dated as of December 16, 2008, by and between NN, Inc. and Computershare Trust Company, N.A., including the form of Certificate of Designation, the Form of Right Certificate and the Summary of Rights To Purchase attached thereto as Exhibits A, B and C, respectively.
99.1	Press Release of NN, Inc. dated December 16, 2008.

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SIGNATURES

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

**NN, INC.**

Date: December 18, 2008

By: /s/ William C. Kelly, Jr.

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Name : William C. Kelly, Jr.  
Title : Vice President and Chief  
Administrative Officer

## Edgar Filing: NN INC - Form 8-K

### Exhibit Index

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