

# SECURITIES AND EXCHANGE COMMISSION

## FORM 8-A12B

Form for the registration/listing of a class of securities on a national securities exchange pursuant to  
Section 12(b)

Filing Date: **1994-01-07**  
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### FILER

#### **CORNERSTONE NATURAL GAS INC**

CIK: **725625** | IRS No.: **741952257** | State of Incorporation: **DE** | Fiscal Year End: **1231**  
Type: **8-A12B** | Act: **34** | File No.: **001-09103** | Film No.: **94500667**  
SIC: **4922** Natural gas transmission

Business Address  
*8080 N CENTRAL EXPWY STE  
1200  
TWELFTH FLOOR LP 47  
DALLAS TX 75206  
2146915536*

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 8-A

FOR REGISTRATION OF CERTAIN CLASSES OF SECURITIES  
PURSUANT TO SECTION 12(b) OR (g) OF THE  
SECURITIES EXCHANGE ACT OF 1934

CORNERSTONE NATURAL GAS, INC.

-----  
(Exact name of registrant as specified in its charter)

Delaware

74-1952257

-----  
(State of incorporation  
or organization)

(I.R.S. Employer  
Identification No.)

8080 North Central Expressway, 12th Floor  
Dallas, Texas 75206

-----  
(Address of principal executive offices)

(Zip Code)

Securities to be registered pursuant to Section 12(b) of the Act:

Title of each class  
to be so registered

Name of each exchange  
on which each class is  
to be registered

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Common Stock, \$0.10  
par value per share

American Stock Exchange

Securities to be registered pursuant to Section 12(g) of the Act:

None  
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ITEM 1. DESCRIPTION OF REGISTRANT'S SECURITIES TO BE REGISTERED

DESCRIPTION OF CAPITAL STOCK

Cornerstone Natural Gas, Inc. (the "Company") is authorized to issue 25,000,000 shares of common stock, par value \$.10 per share (the "Common Stock") of which 12,515,959 shares are issued and outstanding, and 5,000,000 shares of preferred stock, par value \$0.10 per share (the "Preferred Stock") of which no shares are issued or outstanding.

COMMON STOCK

Holders of the Common Stock are entitled to one vote per share for the election of directors and other corporate matters. Except as set forth below, there are no provisions in the Company's Restated Certificate of Incorporation (the "Restated Certificate") specifying the vote required by such stockholders to take action. The bylaws of the Company specify that, when a quorum is present at any meeting, the vote of the holders of at least a majority of the outstanding shares entitled to vote who are present, in person or by proxy, shall decide any question brought before the meeting, unless a different vote is required by law or the Restated Certificate. Holders of Common Stock are not entitled to cumulative voting rights. Therefore, the holders of a majority of the shares of Common Stock voting for the election of directors may elect all the directors if they choose to do so. The holders of Common Stock are entitled to dividends in such amounts and at such times as may be declared by the Board of Directors of the Company out of funds legally available therefor. Upon liquidation or dissolution, holders of Common Stock are entitled to share ratably in all net assets available for distribution to stockholders after payment of all creditors and any liquidation preferences to holders of Preferred Stock. The holders of the Common Stock do not have any preemptive rights. All outstanding shares of Common Stock are duly authorized, validly issued, fully paid and nonassessable. As of December 31, 1993, there are 586 holders of record of Common Stock. The Company believes that there are substantially more than 586 beneficial owners of the Company's Common Stock.

PREFERRED STOCK

The Board of Directors of the Company is empowered, without approval of the stockholders, to cause shares of Preferred Stock to be issued in one or more series and to establish the number of shares to be included in each such series and the rights, powers, preferences and limitations of each series. There are no provisions in the Restated Certificate specifying the vote required by such stockholders to take action. The bylaws of the Company specify that, when a quorum is present at any meeting, the vote of the holders of at least a majority of the outstanding shares entitled to vote who are present, in person or by proxy, shall

decide any question brought before the meeting, unless a different vote is required by law or the Restated Certificate. Because the Board of Directors has the power to establish the preferences and rights of each series, it may afford the holders of any series of Preferred Stock preferences, powers and rights, voting or otherwise, senior to the rights of holders of Common Stock. The issuance of the Preferred Stock could have the effect of delaying or preventing a change in control of the Company. The Board of Directors has no present plans to issue any of the Preferred Stock.

#### RESTRICTIONS ON TRANSFER

General. In order to preserve the Company's existing net operating loss carryforwards (the "NOL Carryforwards"), the Restated Certificate provides that no person who as a result of any such attempted transfer would own, directly or indirectly, Common Stock having a fair market value equal to 5% or more of the aggregate fair market value of the outstanding shares of Common Stock (a "5% Holder"), may acquire or transfer shares of Common Stock (or options, warrants or rights or securities exercisable, convertible or exchangeable therefor), unless such person obtains the written approval of the Board of Directors (or a committee thereof) of the Company. Any such attempted transfer shall be void ab

initio, and the intended transferee shall be deemed to have appointed the

Company as exclusive agent to sell such shares to a transferee eligible to acquire such shares or otherwise approved by the Board of Directors (or a committee thereof). In this regard, the Company is not required to obtain a fair price for the shares when acting as agent for the intended transferee. This restriction on transfer will terminate on December 2, 1996.

Procedures for Transfer. Any 5% Holder who proposes to acquire Common Stock, shall, prior to the date of the proposed transfer, request in writing (a "Request") that the Board of Directors of the Company review the proposed transfer and authorize the proposed transfer pursuant to the Restated Certificate of the Company. A Request shall be addressed to the President of the Company at the Company's principal place of business, and shall include (i) the name, address and phone number of the 5% Holder, (ii) a description of the Common Stock to be transferred to or by the 5% Holder, (iii) the date of the proposed transfer, (iv) the name of the transferor of the Common Stock to be transferred and (v) a request that the Board of Directors authorize, if appropriate, the transfer by or to the 5% Holder pursuant to the Restated Certificate and inform the 5% Holder of the Board's determination regarding the proposed transfer. The Board of Directors (or a duly authorized committee of the Board) shall determine whether to authorize the proposed transfer described in the Request as permitted under the Restated Certificate and shall cause the 5% Holder making the Request to be informed in writing of such determination. The Board of Directors (or the committee thereof) shall authorize a transfer to a 5% Holder of Common Stock

if the Board or committee determines in its absolute and sole discretion that a transfer will not jeopardize the preservation of the Company's federal income tax attributes pursuant to Sections 382 and 383 of the Internal Revenue Code of 1986, as amended (the "Code") (such determination to be made by taking into account historical transfers made, the proposed transfer, and other anticipated transfers). If a Request is denied, any transfer of the Common Stock described in the Request will be deemed to be in violation of the Restated Certificate.

In the event of an attempted transfer of Common Stock in violation of the Restated Certificate, the Company shall be deemed to be the exclusive and irrevocable agent for the intended transferee of such Common Stock for a period ending 180 days after the Company has actual knowledge of such transfer. The Company shall be such agent for the limited purpose of consummating a sale of such Common Stock to an eligible transferee. An eligible transferee is (i) any person to whom Common Stock may be transferred without a Request, or, (ii) if a Request is required in order to transfer Common Stock to such person without violating the Restated Certificate, a person to whom the transfer of Common Stock has been approved by the Board of Directors. The record ownership of the subject Common Stock shall remain in the name of the transferor until the Common Stock has sold to an eligible transferee. Even if such a transfer is shown in the Company's transfer records, all rights of beneficial ownership in the Common Stock shall remain with the transferor until such Common Stock is transferred to an eligible transferee, and any transfer in violation shall be and remain null and void ab initio. The Company shall be entitled to assign its agency to any

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person or entity for the purpose of effecting a permitted sale of such Common Stock.

The Company, as agent, shall not be deemed to be a stockholder of the Company or entitled to any rights of a stockholder of the Company. The rights to vote and to receive dividends and liquidating distributions with respect to such Common Stock shall remain with the transferor until the Common Stock is transferred to an eligible transferee.

In the event of a sale to an eligible transferee, the proceeds of such sale shall be applied as follows: first, to reimburse the Company or its assignee for any expenses incurred by the Company acting in its role as agent for the sale of such Common Stock; second, to the extent of any remaining proceeds, to reimburse the intended transferee for any payments made to the transferor by such intended transferee for the Common Stock; and the remainder, if any, to the original transferor.

Where the purported transfer to the intended transferee is by gift or similar conveyance, the amount deemed paid by the intended transferee for purposes of computing the amount to be reimbursed to the intended transferee shall be the fair market value of the

Common Stock at the time of the purported transfer. If the Company is unable to locate the intended transferee within the period ending six months after the sale to an eligible transferee, the Company shall contribute the proceeds otherwise payable to the intended transferee to one or more organizations selected by the Board of Directors or a committee thereof that are described in Section 501(c)(3) of the Code.

In taking any such action, the Restated Certificate provides that the Company, and its directors, officers and agents, will be fully protected in relying upon any notice, paper or other document reasonably believed by the Company or any such person to be genuine and sufficient, and, to the extent permitted by law, in no event shall the Company, or any of its directors, officers or agents be liable for an act performed or omitted to be performed in connection therewith in the absence of gross negligence or willful misconduct. The Restated Certificate of Incorporation of the Company also provides that the Company and its directors, officers and agents may consult with counsel in connection with its duties hereunder and, to the extent permitted by law, each shall be fully protected by any act taken, suffered or permitted in good faith in accordance with the advice of counsel.

Legend on Certificates. Each share of Common Stock issued bears a legend referencing this restriction on transfer, which reads as follows:

"The shares of Common Stock represented by this certificate are issued pursuant to the First Amended Joint Plan of Reorganization for CORNERSTONE NATURAL GAS, INC. (formerly ENDEVCO, INC.) and certain other debtors and debtors in possession named therein, as confirmed by the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division on October 13, 1993. The Corporation's Restated Certificate of Incorporation contains restrictions prohibiting the sale, transfer, disposition, purchase or acquisition of any shares of Common Stock without the authorization of the Corporation's Board of Directors or designated officer by or to any holder (a) who beneficially owns directly or through attribution (as determined under Section 382 of the Internal Revenue Code of 1986, as amended from time to time) 5% or more of the then issued and outstanding shares of Common Stock or Preferred Stock of the Corporation or (b) who, upon the sale, transfer, disposition, purchase or acquisition of any shares of Common Stock or Preferred Stock of the Corporation would beneficially own directly or through attribution (as determined under Section 382 of the Internal Revenue Code of 1986, as amended from time to time) 5% or more of the then issued and outstanding shares of Common Stock or Preferred Stock, if that sale, transfer, disposition,

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purchase or acquisition would jeopardize the Corporation's preservation of its Federal income tax attributes pursuant to Section 382 of the Internal Revenue Code of 1986, as amended from time to time. The Corporation will furnish a copy of its Certificate of Incorporation to the holder of record

of this certificate without charge upon written request to the Corporation at its principal place of business."

#### CERTAIN EFFECT OF AUTHORIZED BUT UNISSUED STOCK

There are 9,919,938 authorized but unissued shares of Common Stock (excluding 2,564,103 shares of Common Stock reserved for issuance under certain warrants (the "Warrants") issued in connection with the consummation of the Company's Plan of Reorganization) and 5,000,000 shares of Preferred Stock available for future issuance without stockholder approval. These additional shares may be utilized for a variety of corporate purposes, including future public offerings to raise additional capital or to facilitate corporate acquisitions. The Company does not currently have any plans to issue additional shares of Common Stock or Preferred Stock (other than shares of Common Stock which may be issued upon the exercise of the Warrants and options which have been granted or which may be granted in the future to the Company's employees).

One of the effects of the existence of unissued and unreserved Common Stock and Preferred Stock may be to enable the Board of Directors to issue shares to persons friendly to current management which could render more difficult or discourage any attempt to obtain control of the Company by means of a merger, tender offer, proxy contest or otherwise, and thereby protect the continuity of the Company's management. Such additional shares could also be used to dilute the stock ownership of persons seeking to obtain control of the Company.

The Board of Directors is authorized, without any further action by the stockholders, to determine the rights, preferences, privileges and restrictions of the unissued Preferred Stock. The purpose of authorizing the Board of Directors to determine such rights and preferences is to eliminate delays associated with a stockholder vote on specific issuances. The Board of Directors may issue Preferred Stock with voting and conversion rights which could adversely affect the voting power of the holders of Common Stock, and which could, among other things, have the effect of delaying, deferring or preventing a change in control of the Company.

#### LIMITATION ON DIRECTOR'S LIABILITY

Delaware has enacted legislation which authorizes corporations to limit or eliminate the personal liability of directors to corporations and their stockholders for monetary damages for breach

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of directors' fiduciary duty of care. The duty of care requires that, when acting on behalf of the corporation, directors must exercise an informed business judgment based on all material information reasonably available to them. Absent the limitations authorized by such legislation, directors are accountable to corporations and their stockholders for monetary damages for conduct constituting gross negligence in the exercise of their duty of care. Although the Delaware legislation does not change directors' duty of care, it

enables corporations to limit available relief to equitable remedies such as injunction or rescission. The Restated Certificate limits the liability of the Company's directors to the Company or its stockholders (in their capacity as directors but not in their capacity as officers) to the fullest extent permitted by such legislation. Specifically, directors of the Company will not be personally liable for monetary damages for breach of a director's fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Company or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived an improper personal benefit.

The inclusion of this provision in the Restated Certificate could have the effect of reducing the likelihood of derivative litigation against directors and may discourage or deter stockholders or management from bringing a lawsuit against directors for breach of their duty of care, even though such an action, if successful, might otherwise have benefitted from the Company and its stockholders.

#### OTHER

The Restated Certificate (i) prohibits certain purchases by the Company of its voting stock without the approval of a majority of its stockholders, (ii) provides that advance notice of stockholder nominations for the election of directors be given and that specified information be provided with respect to stockholder nominees and (iii) requires approval of 75% of the voting stock to alter, amend, or repeal certain portions of the Restated Certificate. Along with the substantial amount of stock held by management and the ability of the Company to issue authorized but unissued Preferred Stock and Common Stock, these provisions could serve to inhibit an attempted takeover of the Company.

#### STATUTORY BUSINESS COMBINATION PROVISION

Section 203 of the Delaware General Corporation Law ("Section 203") restricts certain transactions between a corporation organized under Delaware law (or its majority-owned subsidiaries)

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and any person holding 15% or more of the corporation's outstanding voting stock, together with the affiliates or associates of such person (an "Interested Stockholder"). Section 203 prevents, for a period of three years following the date that a person becomes an Interested Stockholder, the following types of transactions between the corporation and the Interested Stockholder (unless certain conditions, described below, are met): (a) mergers or consolidations, (b) sales, leases, exchanges, mortgages, pledges, transfers or other dispositions of 10% or more of the aggregate assets of the corporation, (c) issuances or transfers by the corporation of any stock of the corporation which



would have the effect of increasing the Interested Stockholder's proportionate share of the stock of any class or series of the corporation, (d) any other transaction which has the effect of increasing the proportionate share of the stock of any class or series of the corporation which is owned by the Interested Stockholder, and (e) receipt by the Interested Stockholder of the benefit (except proportionately as a stockholder) of loans, advances, guarantees, pledges or other financial benefits provided by the corporation.

The three year ban does not apply if either the proposed transaction or the transaction by which the Interested Stockholder became an Interested Stockholder is approved by the Board of Directors of the corporation prior to the date such stockholder becomes an Interested Stockholder. Additionally, an Interested Stockholder may avoid the statutory restriction if, upon the consummation of the transaction whereby such stockholder becomes an Interested Stockholder, the stockholder owns at least 85% of the outstanding voting stock of the corporation without regard to those shares owned by the corporation's officers and directors or certain employee stock plans. Business combinations are also permitted within the three year period if approved by the Board of Directors and authorized at an annual or special meeting of stockholders by the holders of at least 66 2/3% of the outstanding voting stock not owned by the Interested Stockholder. In addition, any transaction is exempt from the statutory ban if it is proposed at a time when the corporation has proposed, and a majority of certain continuing directors of the corporation have approved, a transaction with a party who is not an Interested Stockholder of the corporation (or who becomes such with Board approval) if the proposed transaction involves (a) certain mergers or consolidations involving the corporation, (b) a sale or other transfer of over 50% of the aggregate assets of the corporation, or (c) a tender or exchange offer for 50% or more of the outstanding voting stock of the corporation.

A corporation may, at its option, exclude itself from the coverage of Section 203 by amending its certificate of incorporation or bylaws by action of its stockholders to exempt itself from coverage, provided that such bylaw or charter amendment shall not become effective until 12 months after the date it is

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adopted. The Company has not adopted such a charter or bylaw amendment.

#### TRANSFER AGENT AND REGISTRAR

The transfer agent and registrar for the Common Stock is Bank One, Texas, N.A.

#### ITEM 2. EXHIBITS

Listed below are all exhibits filed as part of the registration statement:

1. Restated Certificate of Incorporation dated November 2, 1993;
2. Bylaws, as currently in effect (Exhibit 3.1 to December 31, 1991 Form 10-K) and Amendment to Bylaws (Exhibit 3.2 to December 31, 1992 Form 10-K).

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SIGNATURE

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereto duly authorized.

CORNERSTONE NATURAL GAS, INC.

By: /s/ RAY C. DAVIS

\_\_\_\_\_  
Ray C. Davis  
Chairman of the Board and  
Chief Executive Officer

Date: January 7, 1994

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RESTATED CERTIFICATE OF INCORPORATION  
OF  
CORNERSTONE NATURAL GAS, INC.  
(FORMERLY ENDEVCO, INC.)

Cornerstone Natural Gas, Inc. (formerly Endeveco, Inc.), a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the Corporation is Cornerstone Natural Gas, Inc. The date of filing its original Certificate of Incorporation with the Secretary of State was May 6, 1988. On November 1, 1993, pursuant to Section 253 of the Delaware General Corporate Laws, the Corporation filed a Certificate of Ownership and Merger pursuant to which (i) the Corporation's wholly owned subsidiary, Cornerstone Natural Gas, Inc., was merged into the Corporation, and (ii) the Corporation's name was changed to Cornerstone Natural Gas, Inc.

2. This Restated Certificate of Incorporation amends, restates and integrates the provisions of the Certificate of Incorporation of the Corporation as hereby and heretofore amended or supplemented.

3. The text of the Certificate of Incorporation as hereby and heretofore amended or supplemented is hereby restated to read as herein set forth in full:

FIRST: The name of the Corporation is Cornerstone Natural Gas, Inc.

SECOND: The period of its duration is perpetual.

THIRD: The purpose for which the Corporation is organized is to transact any and all lawful business for which a corporation may be organized under the General Corporation Law of the State of Delaware.

FOURTH:

4.1 The total number of shares of stock which the Corporation shall have authority to issue is Thirty Million (30,000,000) shares, consisting of Twenty-Five Million (25,000,000) shares of one class of Common Stock, having a par value of \$0.10 per share, and Five Million (5,000,000) shares of Preferred Stock, having a par value of \$0.10 per share.

The Board of Directors of the Corporation is authorized, subject to any limitations prescribed by law, to provide for the issuance of the shares of Preferred Stock in series, and by filing a certificate pursuant to the applicable law of the State of Delaware, to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and any

qualifications, limitations or restrictions thereof. The number of authorized shares of Preferred Stock may be

increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the Common Stock, without a vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the certificate or certificates establishing the series of Preferred Stock.

4.2 Except as otherwise provided in ARTICLE TWELFTH hereof, nothing herein shall limit the right of the Corporation to purchase any of its outstanding shares in accordance with law, by public or private transaction.

4.3 The Corporation shall be entitled to treat the person in whose name any share, right or option is registered as the owner thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in such share, right or option on the part of any other person, whether or not the Corporation shall have notice thereof, save as may be expressly provided by the laws of the State of Delaware.

4.4 A director shall be fully protected in relying in good faith upon the books of account of the Corporation or statements by its officials as to the value and amount of the assets, liabilities and/or net profits of the Corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid.

4.5 Without action by the stockholders, shares of stock may be issued by the Corporation from time to time for such consideration as may be fixed from time to time by the Board of Directors thereof, and any and all such shares so issued, the full consideration for which has been paid or delivered, shall be deemed fully paid stock and not liable to any further call or assessment thereon; and the holder of such shares shall not be liable for any further call or assessment thereon, or for any other payment thereon.

FIFTH: The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, Wilmington, Delaware 19801, and the name of its registered agent at such address is The Corporation Trust Company. The agent is located in New Castle County.

SIXTH: The number of directors of the Corporation shall be fixed by, or in the manner provided in the By-Laws of the Corporation.

SEVENTH: Advance notice of nominations for the election of directors shall be given in the manner and to the extent provided in the By-Laws of the Corporation.

EIGHTH: No action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, and the power of stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

NINTH: For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation of its directors and stockholders, it is further provided:

(a) The election of directors of the Corporation need not be by written ballot.

(b) The Board of Directors of the Corporation is expressly authorized and empowered to adopt, amend or repeal By-Laws, subject to the power of the stockholders to amend or repeal the By-Laws made by the Board of Directors.

(c) Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept, subject to any applicable statutory provision, outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

TENTH: No director of the Corporation shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, as the same exists or hereafter may be amended, or (iv) for any transaction from which such director derived an improper personal benefit. If the General Corporation Law of the State of Delaware is amended after the filing of this Certificate of Incorporation so as to authorize corporate actions further eliminating or limiting personal liability of directors, then the liability of each director of the Corporation shall be eliminated or limited to the fullest extent permitted by the law of the State of Delaware as the same exists from time to time. Any repeal or modification of this paragraph by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

ELEVENTH:

11.1 (a) Until December 2, 1996, or such earlier date as shall be designated by the Board of Directors, no person who beneficially owns directly or through attribution (as determined under Section 382 of the Internal Revenue Code of 1986, as amended from time to time ("IRC Section 382")) five percent (5%) or more of the outstanding shares of Common Stock, or who, upon the acquisition of any shares of Common Stock, would beneficially own directly or through attribution (as determined under IRC Section 382) five percent (5%) or more of the outstanding shares of Common Stock (a "5% Holder"), shall sell, transfer, dispose, purchase or acquire or contract to sell, transfer, dispose, purchase or acquire in any manner whatsoever, whether voluntarily or involuntarily, by operation of law or otherwise (any such sale, transfer,

disposition, purchase, acquisition or contract being a "Transfer"), any shares of Common Stock or any option, warrant or other right to purchase or acquire shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock, except as authorized pursuant to this Article Eleventh. (For purposes of this Article Eleventh, except for paragraph 11.4, "Common Stock" includes any option, warrant or other right to purchase

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or acquire shares of Common Stock or any securities convertible into or exchangeable for share of Common Stock.)

(b) The restrictions contained in this Article Eleventh are for the purpose of reducing the risk that any change in the stock ownership may jeopardize the preservation of the Corporation's Federal income tax attributes. In connection therewith, and to provide for the effective policing of these provisions, any 5% Holder who proposes to Transfer shares of Common Stock shall, prior to the date of the proposed Transfer request in writing (a "Request") that the Board of Directors (or any committee of the Board of Directors authorized to review and determine whether to authorize Requests (the "Transfer Review Committee")) or any officer of the Corporation designated by the Board of Directors to review and determine whether to authorize Requests (the "Transfer Review Officer") review the proposed Transfer and authorize the proposed Transfer pursuant to paragraph 11.3. A Request shall be addressed to the President of the Corporation at the Corporation's principal place of business or be hand delivered or telecopied to the Corporation's telecopier number at its principal place of business. A Request shall include (i) the name, address and phone number of the 5% Holder, (ii) a description of the shares of Common Stock proposed to be Transferred by or to the 5% Holder, (iii) the date of the proposed Transfer, (iv) the name of the transferor and transferee of the shares of Common Stock to be Transferred by or to the 5% Holder and (v) a Request that the Board of Directors or the Transfer Review Committee or the Transfer Review Officer authorize, if appropriate, the Transfer by or to the 5% Holder pursuant to paragraph 11.3 and inform the 5% Holder of the Board of Directors' or the Transfer Review Committee's or the Transfer Review Officer's determination regarding the proposed Transfer. If the 5% Holder seeks to sell or dispose of shares of Common Stock, within five business days of receipt by the President of a Request, then either a meeting of the Board of Directors or the Transfer Review Committee shall be held to, or the Transfer Review Officer shall, determine whether to authorize the proposed Transfer described in the Request under paragraph 11.3. If the 5% Holder seeks to purchase or acquire shares of Common Stock, at the next regularly scheduled meeting of the Board of Directors following the fifth business day after receipt by the President of a Request, either the Board of Directors or the Transfer Review Committee will meet to, or the Transfer Review Officer shall, determine whether to authorize the proposed Transfer described in the Request under paragraph 11.3. In either case, the Board of Directors or the Transfer Review Committee or the Transfer Review Officer shall conclusively determine whether to authorize the proposed Transfer and shall immediately cause the 5% Holder making the Request to be informed of such determination.

11.2 (a) Any Transfer of shares of Common Stock in violation of this Article Eleventh by or to a 5% Holder shall be null and void. In the event of an attempted or purported Transfer of shares of Common Stock in violation of this Article Eleventh, the Corporation shall be deemed to be the exclusive and irrevocable agent for the transferor of such shares of Common Stock. The Corporation shall be such agent for the limited purpose of consummating a sale of such shares to an eligible transferee, which may include, without limitation, the transferor. The record ownership of the subject shares shall remain in the name of the transferor until the shares have been sold by the Corporation or its assignee, as agent, to an eligible transferee in

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accordance with this Article Eleventh. The Corporation shall be entitled to assign its agency hereunder to any person or entity including, but not limited to, the intended transferee of the shares, for the purpose of effecting a permitted sale of such shares. Neither the Corporation, as agent, nor any assignee of its agency hereunder, shall be deemed to be a stockholder of the Corporation nor be entitled to any rights of a stockholder of the Corporation, including, but not limited to, any right to vote such shares of Common Stock or to receive dividends or liquidating distributions in respect thereof, if any, but the Corporation or its assignee shall only have the right to sell and transfer such shares on behalf of and as agent for the transferor to another person or entity, provided that a Transfer to such other person or entity does not violate the provisions of this Article Eleventh. The rights to vote and to receive dividends and liquidating distributions with respect to such shares shall remain with the transferor. The intended transferee shall not be entitled to any rights of stockholders of the Corporation, including, but not limited to, the rights to vote or to receive dividends and liquidating distributions with respect to such shares. In the event of a permitted sale and transfer, whether by the Corporation or its assignee, as agent, the proceeds of such sale shall be applied first to reimburse the Corporation or its assignee for any expenses incurred by the Corporation acting in its role as the agent for the sale of such shares, second, to the extent of any remaining proceeds, to reimburse the intended transferee for any payments made to the transferor by such intended transferee for such shares, and the remainder, if any, to the original transferor.

(b) For a period of 90 days after its receipt of knowledge of an attempted or purported Transfer in violation of this Article Eleventh, the Corporation may elect to acquire such shares at the same purchase price agreed to be paid by the intended transferee, in which case the Corporation shall be obligated to pay to the intended transferee of such shares, as restitution on behalf of the transferor out of the purchase price, the amount of any payments made by such intended transferee to the transferor for such shares and to pay any remainder of the purchase price to the transferor; such amounts shall be payable to the intended transferee and the transferor, as the case may be, within 10 days after the Corporation exercises such right.

11.3 The Board of Directors or the Transfer Review Committee or the Transfer Review Officer shall authorize a Transfer by or to a 5% Holder of shares of Common Stock if that Transfer will not jeopardize the Corporation's preservation of its Federal income tax attributes pursuant to IRC Section 382. In deciding whether to approve any proposed Transfer of shares of Common Stock by or to a 5% Holder, the Board of Directors or the Transfer Review Committee or the Transfer Review Officer may seek the advice of counsel with respect to the Corporation's preservation of its Federal income tax attributes pursuant to IRC Section 382 and may request all relevant information from the 5% Holder with respect to all shares of Common Stock directly or indirectly owned by such 5% Holder. Any Person who makes a Request of the Board of Directors or the Transfer Review Committee or the Transfer Review Officer pursuant to this paragraph 11.3 to Transfer shares of Common Stock shall reimburse the Corporation, on demand, for all costs and expenses incurred by the Corporation with respect to any proposed Transfer of shares of Common Stock, including, without limitation, the Corporation's costs and expenses incurred in determining whether to authorize that proposed Transfer.

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11.4 All certificates for shares of Common Stock issued by the Corporation shall conspicuously bear the following legend:

"The shares of Common Stock represented by this certificate are issued pursuant to the First Amended Joint Plan of Reorganization for CORNERSTONE NATURAL GAS, INC. (formerly Endeveco, Inc. and certain other debtors and debtors in possession named therein, as confirmed by the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division on October 13, 1993. The Corporation's Restated Certificate of Incorporation contains restrictions prohibiting the sale, transfer, disposition, purchase or acquisition of any shares of Common Stock without the authorization of the Corporation's Board of Directors or designated officer by or to any holder (a) who beneficially owns directly or through attribution (as determined under Section 382 of the Internal Revenue Code of 1986, as amended from time to time) 5% or more of the then issued and outstanding shares of Common Stock or Preferred Stock of the Corporation or (b) who, upon the sale, transfer, disposition, purchase or acquisition of any shares of Common Stock or Preferred Stock of the Corporation would beneficially own directly or through attribution (as determined under Section 382 of the Internal Revenue Code of 1986, as amended from time to time) 5% or more of the then issued and outstanding shares of Common Stock or Preferred Stock, if that sale, transfer, disposition, purchase or acquisition would jeopardize the Corporation's preservation of its Federal income tax attributes pursuant to Section 382 of the Internal Revenue Code of 1986, as amended from time to time. The Corporation will furnish a copy of its Restated Certificate of Incorporation to the holder of record of this certificate without charge upon written request to the Corporation at its principal place of business."

11.5 If any portion of this Article Eleventh shall be determined judicially



to be invalid or unenforceable, such invalidity or unenforceability shall not affect the rest of this Article Eleventh or any other article, which shall thereafter be interpreted as if the invalid or unenforceable part were not contained therein.

TWELFTH:

12.1 Except as expressly permitted in paragraph 12.2 below, any purchase by the Corporation or any Subsidiary of Shares of Voting Stock from an Interested Stockholder who has beneficially owned such Voting Stock for less than two years prior to the date of such purchase, at a price per share in excess of the fair market value at the time of such purchase of the shares so purchased, shall require the affirmative vote of not less than a majority of the combined voting power of the then outstanding shares of Voting Stock held by Disinterested Stockholders. Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage or separate class vote may be specified, by law or in any agreement with any national securities exchange or otherwise.

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12.2 The provisions of paragraph 12.1 hereof shall not be applicable to any purchase of shares of Voting Stock, if such purchase is pursuant to (a) an offer, made available on the same terms, to the holders of all of the outstanding shares of the same class as those purchased or (b) a purchase program effected on the open market and not the result of a privately negotiated transaction.

12.3 The Board of Directors shall have the power and duty to determine for purposes of this Article TWELFTH (a) whether the provisions of this Article are applicable to a particular transaction, (b) whether a person is an Interested Stockholder, (c) the number of shares of Voting Stock or other securities beneficially owned by any person, (d) whether a person is an Affiliate or Associate of another and (e) what is fair market value and whether a price is above fair market value as of a given date.

12.4 For the purposes of this Article TWELFTH:

(a) A "person" shall mean any individual, firm, corporation, partnership, limited liability company, trust or other entity.

(b) "Interested Stockholder" shall mean any person (other than the Corporation or any Subsidiary) who or which:

(i) is the beneficial owner, directly or indirectly, of five percent (5%) or more of the voting power of the outstanding Voting Stock; or

(ii) is an Affiliate of the Corporation and at any time within the one-year period immediately prior to the date in question was the

beneficial owner, directly or indirectly of five percent (5%) or more of the voting power of the then outstanding Voting Stock, or

(iii) is an assignee of or has otherwise succeeded to the beneficial ownership of any shares of Voting Stock which were at any time within the one-year period immediately prior to the date in question beneficially owned by an Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933, as amended.

(c) "Disinterested Stockholder" shall mean a stockholder of the Corporation who is not an Interested Stockholder or an Affiliate or an Associate of an Interested Stockholder.

(d) A person shall be a "beneficial owner" of any Voting Stock:

(i) that such person or any of its Affiliates or Associates beneficially owns, directly or indirectly; or

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(ii) that such person or any of its Affiliates or Associates has (A) the right to acquire (immediately or after the passage of time), or (B) the right to vote or to direct the vote; or

(iii) that is beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of Voting Stock.

(e) For the purposes of determining whether a person is an Interested Stockholder pursuant to subparagraph (b) of this paragraph 12.4 the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned by such person through application of subparagraph (d) of this paragraph 12.4 but shall not include any other shares of Voting Stock which may be issuable to other persons pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, exchange rights, warrants or options, or otherwise.

(f) "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on January 1, 1993.

(g) "Subsidiary" shall mean any entity of which a majority of any class of equity security is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Interested Stockholder set forth in subparagraph (b) of this paragraph 12.4 the term "Subsidiary" shall mean only an entity of which a majority of each

class of equity security is owned, directly or indirectly, by the Corporation.

(h) "Disinterested Director" means any member of the Board of Directors of the Corporation who is not an Affiliate of, and not a nominee of, the Interested Stockholder and was a member of the Board of Directors prior to the Determination Date, and any successor of a Disinterested Director who is not an Affiliate of, and not a nominee of, the Interested Stockholder and who is recommended to succeed a Disinterested Director by a majority of Disinterested Directors then on the Board of Directors.

(i) "Fair Market Value" means: (1) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such Stock on the American Stock Exchange Composite Tape, or, if such Stock is not quoted on the Composite Tape, on the American Stock Exchange, or, if such Stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934, as amended, on which such Stock is listed, or, if such Stock is not listed on any such exchange, the highest closing sales price or bid quotation with respect to a share of such Stock during the 30-day period preceding

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the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or, if no such quotations are available, the Fair Market Value on the date in question of a share of such Stock as determined by a majority of the Disinterested Directors in good faith; and (2) in the case of property other than Stock, the Fair Market Value of such property on the date in question as determined by a majority of the Disinterested Directors in good faith.

(j) "Determination Date" means the date on which the Interested Stockholder became an Interested Stockholder.

(k) "Voting Stock" means stock of all classes and Series of the Corporation entitled to vote generally in the election of directors.

THIRTEENTH: In addition to any requirements of law and any other provisions of this Certificate of Incorporation or any resolution or resolutions of the Board of Directors adopted pursuant to Article FOURTH of this Certificate of Incorporation (and notwithstanding the fact that a lesser percentage may be specified by law or any such resolution or resolutions), the affirmative vote of the holders of 75% or more of the voting power of the then outstanding shares of Voting Stock, voting together as a single class, shall be required to amend, alter or repeal, or adopt any provisions inconsistent with Articles TWELFTH or THIRTEENTH of this Certificate of Incorporation.

FOURTEENTH: No nonvoting equity securities of the Corporation may be issued; this provision included in this Restated Certificate of Incorporation in

compliance with Section 1123 of the United States Bankruptcy Code, 11 U.S.C. Section 1123, shall have no force and effect except to the extent required by such Section so long as such Section is in effect and applicable to the Corporation.

4. This Restated Certificate of Incorporation shall be effective as of November 2, 1993.

Cornerstone Natural Gas, Inc. (formerly Endevo, Inc.) hereby further certifies that this Restated Certificate of Incorporation is made and filed by Cornerstone Natural Gas, Inc. (formerly Endevo, Inc.) pursuant to the First Amended Joint Plan of Reorganization filed by Cornerstone Natural Gas, Inc. (formerly Endevo, Inc.) and certain affiliated debtors in proceedings under Chapter 11 of the Federal Bankruptcy Code, 11 U.S.C. Section 101 et seq., confirmed by the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division on October 13, 1993 in accordance with the provisions of Section 303 of the General Corporation Law of the State of Delaware.

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IN WITNESS WHEREOF, Cornerstone Natural Gas, Inc. (formely Endevo, Inc.) has caused this certificate to be signed by Robert L. Cavnar, its Senior Vice President, and attested by Kelly Jameson, its Secretary, and has caused its corporate seal to be hereunto affixed, this 2nd day of November, 1993.

CORNERSTONE NATURAL GAS, INC.  
(FORMERLY ENDEVCO, INC.)

By: /s/ ROBERT L. CAVNAR

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Name: Robert L. Cavnar  
Title: Senior Vice President

Attest:

/s/ KELLY JAMESON

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Kelly Jameson  
Secretary

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