ADD-BACKS: Discretionary expenditures made by business owners that are "added back" to the bottom line during the recasting process.

ADDENDUM: A written instrument that adds something to a written contract.

AGENCY DISCLOSURE: A written explanation to be signed by a prospective buyer or seller, explaining to the client the role that the broker plays in the transaction (The purpose of disclosure is to explain whether the broker represents the buyer or seller or is a dual agent, representing both, or a subagent, an agent of the seller's broker. This allows the customer to understand to which party the broker owes loyalty.)

AMENDMENT: A written instrument that changes something previously agreed to.

AMORTIZATION: The periodic expense of an amount paid for an intangible asset over a period of time.

ARBITRATION: The submission of a disputed matter for resolution outside the normal judicial system. It is often faster and less costly than courtroom procedures. An arbitration award can be enforced legally in court. If one or more parties cannot agree on a single arbitrator, they can select arbitrators under the rules of the American Arbitration Association (AAA). Arbitration clauses are often inserted into contracts as the forum to settle disputes arising out of the contract.

ASSET SALE: A sale of a company when only the assets of the business are sold, not the stock of the corporation (This allows the new buyer to depreciate most of the assets over five or fifteen years and eventually recoup most or all of the purchase price. An asset sale also frees a buyer from any liabilities the previous owner may have incurred.)

ASSIGNMENT: A transfer in writing of an interest in property or other things of value from one person or entity to another.

AUDIT: An examination of a company's financial records and the accounting systems, controls, and records that produced them.

BALANCE SHEET: A report listing the balances of the assets, liabilities, and equity as of a specific date.

BILL OF SALE: A written agreement by which one person assigns or transfers his or her rights to or interest in goods and personal property to another.

BUSINESS BROKER OR INTERMEDIARY: A professional who assists in the buying and selling of businesses.

BUSINESS TYPE: The legal structure of the business. Types include Sole Proprietorship, Partnership, S-Corporation, C-Corporation, Limited Liability Company or Limited Liability Partnership as follows:

- **SOLE PROPRIETORSHIP**: A business entity that involves just one individual who owns and operates the enterprise.
- **PARTNERSHIP**: A business that is unincorporated and organized by two or more individuals
- **S-CORPORATION:** A type of corporation that provides its owners with tax treatment that is similar to a partnership and liability protection similar to a corporation.
- **C-CORPORATION:** A type of corporation, unlike an S-corporation, that is not restricted as to the types of eligible shareholders (The shareholders can include other individuals, corporations, trusts, partnerships, LLCs, and other quasi-entities. The impact of double taxation - on the corporation's income and the separate taxation on the dividends - constitutes the impact of the C-corporation treatment.)
- **LIMITED LIABILITY COMPANY (LLC):** A flexible form of business enterprise that blends elements of a corporation and a partnership or sole proprietorship, depending on how many owners there are.

• **LIMITED LIABILITY PARTNERSHIP (LLP):** A partnership in which some or all partners have limited liability (It therefore exhibits elements of partnerships and corporations.)

CAPITALIZED ITEMS: Assets with an economic life of one year or more. (The cost is moved to the balance sheet and these costs can be written down by depreciation or amortization over time.)

CASH FLOW: Profit after principal and interest are deducted from net operating income (NOI).

CLOSING: When all the details of the business sale are completed and the money distributed to the seller, seller's agents, creditors and others.

CLOSING COSTS: The costs of seller and buyer at conveyance of business and property (These can include accounting and legal fees as commissions to a business broker or intermediary.)

CLOSING DOCUMENTS: The legal documents that are part of a business closing. They might include: a definitive purchase contract, promissory notes, mortgage, security agreements, financing statements, subordination agreements, bill of sale, covenant-not-to-compete, consulting agreements, employment agreements, leases, assignments, escrow agreement, releases, tax clearances, director and shareholder consents, legal opinions, environmental opinions, fairness opinions, and IRS Form 8594 Asset Acquisition Statement.

CLOSING STATEMENT: A statement which contains the financial settlements between the buyer and seller and the cost each must pay. They may be on one statement, or the buyer and seller may each receive separate ones.

COLLATERAL: A security, such as a mortgage, given to protect debt.

CONDITIONAL SALES CONTRACT: A contract in which owner retains title until buyer has met all terms and conditions; a familiar device in land sales; also called land contract or installment contract. (Buyer acquires equitable title until final payment; after delivery of deed, buyer has legal title.)

CONFIDENTIAL BUSINESS PROFILE: A document utilized in the sale of businesses that details and showcases aspects of the business for sale while being accurate and truthful.

CONFIDENTIALITY AGREEMENT: An agreement made to protect confidential information if it has to be disclosed to another party. This often happens during negotiations for a larger contract, when the parties may need to divulge information about their operations to each other. In this situation, the confidentiality agreement forms a binding contract not to pass on that information whether or not the actual contract is ever signed. Also known as a non-disclosure agreement.

CONTINGENCY: A clause in an agreement, contract, escrow, etc. that only makes it binding upon the occurrence of a stated event. For example, the sale of the business is contingent upon the buyer obtaining financing.

CONTRACT: A voluntary and lawful agreement between two or more parties to do, or not to do, something. Elements of an enforceable contract include: (a) an offer to be bound to do or refrain from doing something, which has been accepted, (b) sufficient consideration, (c) a valid subject matter, (d) legal capacity of the parties, and (e) for those contracts to which the Statute of Fraud applies, its requirements must be met.

CONVEYANCE: A transfer of title.

COST OF GOODS SOLD (COGS): The cost of a product or service sold to customers.

COUNTER OFFER: Voids first offer and creates new offer.

COVENANT-NOT-TO-COMPETE: An agreement made part of a purchase contract, in which the seller promises not to enter into a similar or competing business, for a specified period of time, within a designated area.

CURRENT ASSETS: Assets that are either cash, will turn into cash, or will be used up within one year.

CURRENT LIABILITIES: Debts the business must pay within one year.

CURRENT MARKET VALUE: What someone is willing to pay you for an item should you choose to sell it today.

DEBT SERVICE: The total payment of principal and interest on loans.

DEPRECIATION: The reduction in value of an asset over its useful life.

DUE DILIGENCE PERIOD: A period of time in which the buyer learns more about and investigates a business for sale in order to determine its worth (This can also be applied to the seller, especially in the case of seller financing, meaning a period of time in which the seller investigates the buyer to determine the buyer's ability to run the business and the buyer's creditworthiness. Due diligence is often performed on the acquirer as well as the target.)

EBITA (Earnings Before Interest, Taxes, Depreciation & Amortization): All interest, tax, depreciation and amortization entries in the Income Statement are reversed out from the bottom line Net Income (It purports to measure cash earnings without accrual accounting, canceling tax-jurisdiction effects, and canceling the effects of different capital structures.)

EARNEST MONEY: A sum of money given to bind an agreement or an offer.

EQUITY: The investment in the business by the owner(s).

ESCROW: The holding of something of value by a person (escrowee or escrow agent) for the benefit of other parties.

EXCLUSIVE RIGHT TO SELL: An agreement and contract giving the broker the right to receive a commission if the property or business is sold by anyone including the seller during the term of the agreement.

FF&E (furniture, fixtures, and equipment): Items of value that are part of a business but are considered personal property.

FIDUCIARY: A position of trust (e.g. broker to principal).

FINANCING STATEMENT: A recorded document filed generally in the secretary of state's office of the state and shows that there is a lien against the fixtures and equipment (personal property) of the business.

FRANCHISE: An agreement under which the franchiser (owner of the rights) licenses the franchisee (the business owner) the right to sell a given product/service or to use certain trademarks or trade names, usually within a designated area.

FRANCHISE FEES: Cash paid to a franchiser for the use of a franchise.

GOODWILL: The amount by which the price paid for a company exceeds the company's estimated net worth at market value of the underlying tangible assets and liabilities (Goodwill is a result of name, reputation, customer loyalty, location, products, etc.)

GUARANTEE: A pledge by a third party to repay a loan in the event that the borrower defaults.

GUARANTOR: A person or organization that guarantees repayment of a loan if the borrower defaults or is unable to pay.

HARD ASSETS: (Also referred to as "Tangible Assets") Those assets which are material or physical (e.g. inventory, equipment, tools, vehicles, real estate, leasehold improvements).

INTANGIBLE ASSET: That which has no physical existence but represents value, such as goodwill, going concern value, business trade name.

LEASEHOLD: The interest which a lessee has in realty.

LETTER OF INTENT (LOI): A description of the key points in a potential sale/ acquisition of a business. It is drafted to see if the parties are in general agreement on key issues before proceeding further in negotiations, and is generally designed not to be legally binding on either party. Sometimes buyers or sellers will use a more informal Indication of Interest to identify the key points of a potential business purchase. Key points that buyers and sellers want to come to a general agreement on often include: stock or asset purchase, purchase price, down payment, seller financing terms, liabilities assumed, covenant-not-to-compete terms, consulting/employment agreement terms and real estate lease terms.

LIEN: A claim or charge upon real or personal property for the satisfaction of some debt or duty which can arise either by agreement or by operation of law.

LIEN SEARCH: A search of public records to determine if a business has any outstanding liens for payment of some debt.

LISTING: A written engagement (contract) between a principal and an agent authorizing the agent to perform services for the principal involving the principal's property (business) (Generally the services provided by the agent involve the proposed sale of the principal's property or business. Also, the property or business listed by the agent is called a Listing.)

MARKETING PLAN: A written explanation of how you plan on reaching customers, making sales, and reaching your financial goals.

MEDIATION: A form of alternative dispute resolution (ADR), a way of resolving disputes between two or more parties with concrete effects. Typically, a third party, the mediator, assists the parties to negotiate a settlement.

MERGER: Any combination that forms one company from two or more previously existing companies.

MISSION STATEMENT: A series of brief sentences or paragraphs that describe the purpose of your business, its products or services, customers, markets, and philosophy.

NET CASH FLOW: Cash available for distribution after taxes and after the effects of financing - calculated as net income plus depreciation less expenditures required for working capital and capital items.

NONDISCLOSURE AGREEMENT: A legally enforceable agreement preventing one party from using or disclosing commercially sensitive information belonging to the disclosing party to a third party.

OPERATING EXPENSES: Selling, general, and administrative expenses that are necessary to run the business (Examples include salaries, insurance, advertising, and rent. Any expenses other than cost of sales.)

OPERATING INCOME: The amount of profit earned during the normal course of operation.

OPERATING PLAN: A written explanation of how one plans on running the business (An operating plan should include a description of the business facility, required operating equipment, supplier and vendor relationships, and needed personnel.)

ORGANIZATIONAL CHART: A diagram of the relationships and responsibilities of individuals or functional departments within your business.

PROFIT AND LOSS STATEMENT (P&L): A financial report listing sales, expenses, and net income that gives operating results for a specific period.

PROMISSORY NOTE: A signed, written instrument which acknowledges a debt, with the promise to pay the debt on specified terms (i.e. payment amount, payment date(s), interest rate).

PRORATION: The division of money obligations according to some formula. In a business closing, a seller may have paid for certain benefits into the future which are assumed by the buyer. The cost of these benefits are "prorated" between the seller and the buyer as part of the closing statement (e.g. prepaid rent, prepaid advertising, security deposits).

PURCHASE AGREEMENT: The agreement setting out the terms for the purchase of a business. A purchase agreement is the "road map" followed by the buyer and the seller in a business transaction. It would include items such as a description of what is being purchased, the down payment and repayment terms, buyer and seller representations, warranties, and indemnification's, and so on.

PURCHASE PRICE ALLOCATION: The manner in which the purchase price of a business is divided between seller and buyer for taxation purposes.

RECASTING: As applied to financial statements, a method of restating financial results in order to determine seller's discretionary earnings (SDE) (Financial recasting eliminates from the historical financial presentation, items such as excessive and discretionary expenses and nonrecurring revenues and expenses, since they reflect the financing decision of the current owner and may not represent financing preferences of a new owner. Recasting provides an economic view of the company, and allows meaningful comparisons with other investment opportunities.)

REPRESENTATION: A statement or condition made that something is true or accurate.

RETURN ON INVESTMENT (ROI): The rate of return at which the sum of the discounted future cash flows plus the discounted future residual value equals the initial cash outlay.

SBA LOAN: A loan that qualifies for a guarantee from the U.S. Small Business Administration.

SELLER'S DISCRETIONARY EARNINGS (SDE): A term used to denote a business's cash flow or the amount of pretax money a buyer can expect to earn in first-year operations.

SELLER FINANCING: A method of financing a business acquisition in which the seller carries a note for a portion of the purchase price. Also called seller carryback.

STOCK SALE: The buyer purchases the stock in a corporation so the corporation is acquired in whole and the buyer obtains all assets and liabilities.

SUBORDINATION: The act of making an encumbrance secondary or junior to another lien.

SUCCESS FEE: Money or other valuable consideration given to broker by principal for services rendered; amount is by agreement.

VALUATION APPROACH: A general way of determining a value indication of a business, business ownership interest, security, or intangible asset using one or more valuation methods (There are three approaches generally used to value a business: Asset Approach, Income Approach, and Market Approach.)

- **ASSET APPROACH:** Determines the business value based on the value of its assets less its liabilities (The commonly used valuation methods under this approach are: asset accumulation method and capitalized excess earnings method.)
- **INCOME APPROACH:** The value of a business based on its ability to generate desired economic benefit for the owners (The key objective of the income based methods is to determine the business value as a function of the economic benefit. The economic benefit such as the seller's discretionary cash flow or net cash flow is capitalized, discounted or multiplied to perform the valuation. The well-known methods under the income approach are: Discounted cash flow method; Capitalization of earnings method; Multiple of discretionary earnings method.)
- **MARKET (MARKET-BASED) APPROACH**: Establishes the business value in comparison to historic sales involving similar businesses (The business valuation methods under the market approach that are typically used in professional business appraisals include the Comparative transaction method and the Guideline publicly traded company method.)

WORKING CAPITAL: The excess of current assets over current liabilities.

WARRANTY: An expressed or implied statement that a situation or thing is as it appears to be or is represented to be.

UNIFORM COMMERCIAL CODE (U.C.C.): State laws which regulate the transfer of personal property. Article Nine of the U.C.C. deals with transactions which are intended to create a security interest in personal property.

U.C.C. SEARCH: A UCC search is a review of the appropriate county and State records in regard to any liens against personal property, tax liens and judgments.